DOCUMENT RESUME

ED 263 685 EA 018 088

AUTHOR Russell, William C.
TITLE Litigation and the Policy Process: The Impact of "Stevenson v. Jefferson County Public Schools" on Racially Disproportionate Suspension.
PUB DATE 85
NOTE 92p.; Paper presented at the Annual Meeting of the American Educational Research Association (Chicago, IL, March 31-April 4, 1985).
PUB TYPE Historical Materials (060) -- Speeches/Conference Papers (150) -- Reports - Descriptive (141)

EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS *Court Litigation; *Discipline Policy; Educational Policy; Elementary Secondary Education; Equal Education; Racial Bias; *Racial Discrimination; School Community Relationship; School Desegregation; School Law; *Student Rights; *Suspension
IDENTIFIERS Kentucky (Louisville); *Mark Stevenson v Jefferson County Public Schools

ABSTRACT

This study examines discipline policy reform resulting from pressure that arose from a class-action suit, "Mark Stevenson v. Jefferson County Public Schools," alleging racially discriminatory discipline policies and procedures. The suit forced the school system and community in Louisville (Kentucky) to negotiate substantially revised discipline policies. The historical context of the case is first reviewed, followed by an indepth discussion of the litigation and its effects on the community. The second and third sections focus on policy revisions arising from the settlement, and on procedures for monitoring compliance with the settlement agreement. The new policies enhanced student rights and emphasized parental involvement and alternatives to suspension and corporal punishment. Statistical analysis of three years of suspension data indicates that implementation of the new policies has been irregular and inadequate, though some progress is reported. Black student suspensions remain disproportionately high, but the problem is evident in fewer schools. Statistical tables are included. (Author/TE)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED263685

Litigation and the Policy Process: The Impact of Stevenson v. Jefferson County Public Schools On Racially Disproportionate Suspensions

William C. Russell
Denison University

1985
AERA

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

William C. Russell

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

BEST COPY AVAILABLE

EA 018 088

Litigation and the Policy Process:
The Impact of Stevenson v. Jefferson County Board of Education
On Racially Disproportionate Suspensions

The study examines discipline policy reform resulting from pressure arising from a class-action suit alleging racially discriminatory discipline policies and procedures. The suit forced the school system and community in Louisville, KY to negotiate substantially revised discipline policies. The new policies enhanced student rights and emphasized parental involvement and alternatives to suspension and corporal punishment.

Statistical analysis of three years of suspension data indicates that implementation of the new policies has been irregular and inadequate, though some progress is reported. Black student suspensions remain disproportionately high, but the problem is evident in fewer schools.

Litigation and the Policy Process: The Impact of Stevenson v. Jefferson County Public Schools On Racially Disproportionate Suspensions

William C. Russell
Denison University

Over the past four decades people in the United States have sought to use the courts, particularly the federal courts, to attempt to redress grievances and to overcome social injustices. Significant changes in our social relations with one another and with the institutions of society have been wrought by the edicts of various courts. In the wake of the Brown rulings of the fifties and the hundreds of other cases regarding segregation, student rights, the rights of handicapped students, school financing schemes, and religious liberties, public education has been central in attempts to use litigation to shape public policy and to define and protect the rights of citizens, both as individuals and as members of legally defined classes.

These efforts have had a mixed record of success; much seems to depend upon the political temper of the times, the composition and political disposition of the Supreme Court and various lower courts, and the level of activism of the Offices for Civil Rights in the Justice and Education Departments. The well-known history of school desegregation is a good case in point. The process languished for several years following the Brown decisions, then accelerated during the sixties in response to the enforcement provisions of the 1964 Civil Rights Act and the activist stance of the Justice Department. This period, of course, was also one of intense activity by people in the civil rights movement, who put their bodies on the line and their

lawyers in the courts in the onslaught against segregationist and racist policies and practices all over the country. More recently, however, we can observe a sharp curtailment, in both protest activities and gains made through litigation; indeed, many of the achievements of the sixties and early seventies are now being rolled back under an administration which opposes the traditional objectives of the civil rights movement in education.

Several illustrations of this reversal come to mind. Assistant Attorney General William Bradford Reynold's recent brief in a Norfolk, VA school case is an excellent, if incredible, example. As a friend of the court, he argued that there is no legal requirement for racially balanced schools. According to the New York Times, the Justice Department's position now is that "a local school board could abolish a completed busing program ordered by a court to achieve desegregation and could return to neighborhood schools even if that increased racial segregation in its schools."[1] The abolition of court-ordered busing in Norfolk would establish 10 schools with 90 percent black students, where now there are none with that high an imbalance. In Cincinnati last year, the NAACP finally settled a decade-long battle to desegregate that city's schools, reaching an agreement which called for voluntary desegregation based upon a magnet school concept, leaving a significant number of predominantly one-race schools. In many parts of the country, school boards watch the progress of these cases with interest, hoping to escape from the court-ordered requirement that their students attend racially balanced schools. This past February the Supreme Court ruled that students do not have the same constitutional protection against unreasonable

searches as do other citizens. The list could go on; the point is, it is no longer the case that students, parents, and civil rights advocates can routinely expect to gain support from the Justice Department and the federal courts as they struggle for equity and freedom from discrimination in education.

This paper examines contemporary efforts to use litigation to achieve social and political objectives by focusing on a recent class-action lawsuit brought by black parents and students, Stevenson v. Jefferson County Public Schools (hereafter, Stevenson).[2] My concern is with the strategy and process of litigation and its impact on the formation or revision of educational policy and practice. The plaintiffs in Stevenson alleged that students' civil rights were being violated by the school system in Louisville, KY, which had a history of disproportionately high black rates of disciplinary suspensions. During the course of the suit, major policy revisions were put into place, with considerable involvement on the part of the plaintiffs, civil rights and community organizations, as well as school personnel. In accordance with the settlement agreed to in 1982, the new discipline policies, in-service training, and a review committee and monitoring system were put into operation at the beginning of the 1982-83 school year. The overall objectives of the settlement agreement, and of the new policies which constituted the heart of it, were to reduce the disproportionate rate of black suspensions, to ensure greater due process and freedom from discriminatory treatment, and to encourage more flexible, effective disciplinary measures.

A good deal more is involved in assessing the activity accompanying Stevenson than a simple recitation of the plaintiff's allegations and the subsequent revisions in school system policy which resulted. The suit was filed within an historical context which also must be explored, especially given the massive jolt to the schools brought on by the 1975 court-ordered merger of the city and county school systems and the simultaneous desegregation of the new metropolitan district. In addition, the Stevenson case involved more than litigation, for it was surrounded by a good deal of community activism, educational politicking, and previous litigation. Within these contexts, my analysis of the revised discipline policies will shed light on one major urban school system's attempt to cope with the problem of equitable discipline in a desegregated setting. Finally, there is a wealth of statistical evidence which can be brought to bear in assessing the success of the new policies in meeting the goals of the Stevenson settlement. Each of these aspects will be treated in turn.

There are lessons to be learned from Stevenson. One is that good policy can result from the pressure of litigation and community activism. On paper, the revised discipline code and other policies strengthened student rights considerably and provided for more flexible, less coercive discipline. Another lesson is that what school policies say and what goes on in schools don't always coincide, in either intent or effect. The new policies brought changes, to be sure, but not always the ones which were intended and frequently some which were unexpected and disquieting. An analysis of Stevenson can also teach us some things about racial interactions and conflict in

the schools, particularly between white staff and black students. Finally, an analysis of Stevenson brings into focus the need for extensive staff training and continued community vigilance and monitoring if fine-sounding policies are to be implemented consistently and effectively.

I. THE HISTORICAL CONTEXT

The problem of racial discrimination in education had a long history in Louisville. Like other southern school districts, both the Louisville city schools and those in the surrounding county system were segregated by law until the late 1950s. When Kentucky's segregationist Day law was over-turned in the wake of the Brown decisions, Louisville was hailed by President Eisenhower and the national media as a model of peaceful, voluntary accomodation to the new, desegregated order. Little had changed, however, as a stringent form of de jure segregation based upon housing patterns set in, with black students being bused in from the county to attend all-black city schools. Though the black schools retained their historic place as a center of the black community and were staffed by dedicated teachers and administrators, their facilities and accomplishments declined even further during the sixties. Alarmed by the growing deterioration of their children's schools and encouraged by the successes of the NAACP in numerous northern desegregation cases, black parents, educators, the local NAACP and the Kentucky Civil Liberties Union all began to press for desegregation through various cases in federal court.[3]

In two of the cases, District Judge James Gordon ruled in favor of the school board, stating that he believed the schools were satisfactorily desegregated. In both cases, his rulings were overturned on appeal to the Sixth Circuit Court in Cincinnati. In a move that surprised virtually everyone, the Sixth Circuit acted far more quickly than had been anticipated on the appeal of Gordon's second ruling. In July of 1975, with only six weeks left before the start of the school year, they ordered the city and county systems merged and a system-wide metropolitan desegregation plan to be put into effect.[4]

Though he disagreed with the Sixth Circuit's ruling, Judge Gordon accepted his "marching orders" and proceeded to direct the attorneys and school administrators as they hurried to work out an acceptable plan. He stipulated that all students equally bear some of the burden of transportation to desegregate the schools, that every school in the county have a racial composition which fell within specified guidelines, and that the staff be desegregated along with the student body. The plan which emerged called for two-way busing so that every elementary school would have between 15 and 40 percent black students and every middle and high school would have between 18 and 40 percent black students. All white students would be bused to an "away" school for two of their grades, while black students would ride to their "away" school for 10 out of their 12 years in school. Students were bused according to their grade level and the first letter of their last name, in order to assure a random, equitable selection process. Students were exempt from busing if they lived in areas recognized by the court as residentially integrated. This latter feature provided a

significant impetus for housing integration so as to avoid busing. In many ways, the Louisville desegregation plan was an innovative approach to an extremely difficult problem.[5]

The opening of school in the fall of 1975 was a traumatic event. To begin with, a school system with nearly 120,000 students and over 160 schools had been created not 6 weeks earlier out of two separate systems, with separate Boards, administrations, and staffs. Add to that the volume of problems associated with the complex desegregation plan. Finally, mix in mobs of angry whites marching to "Stop Forced Busing!", a black community equally determined to achieve its goal, and the national media. This combination of events and circumstances led to one of the ugliest, most violent confrontations over desegregation in the nation's history.[6]

Night after night, white crowds estimated in the thousands marched and rioted against busing. Buses were stoned, police helicopters were fired upon, a policeman lost an eye, and shopkeepers and passing motorists were threatened if they failed to display anti-busing signs. Rioting was so severe that 800 National Guardsmen were called out to disperse demonstrators with tear gas. Under threat from the anti-busing forces, including the Ku Klux Klan, no gasoline dealer would sell fuel to the school system. White students were organized to boycott the opening weeks of school. Black parents and students were committed to seeing the plan succeed, however, and their organization, the United Black Protective Parents, accompanied children to and from school to defend them against harrassment.

Judge Gordon responded vigorously to what he regarded as an assault on the authority of the federal court. When the gasoline was cut off, he requisitioned fuel in tank trucks from nearby Fort Knox, to be delivered under armed guard. He imposed sharp restraints on the activities of both protesters and the press, restricting them to demarcated areas some distance from any school entrance. He ordered a school employee to jam CB radio transmissions to foil demonstrators and forbade assemblies of more than three people near any school. By his own admission Gordon played a little fast and loose with constitutional guarantees of freedom of assembly, speech, and the press, but he did act decisively to try to prevent further violence as school began that year. His actions infuriated the anti-busing forces, who marched on his home and threatened his life innumerable times. Those threats were taken seriously, forcing the judge to live under the protection of federal marshals for nearly four years.[7]

In spite of these sorts of hostilities, schools did open that year and black and white students began to attend desegregated schools all over Jefferson County. A substantial number of white students fled to schools in neighboring counties or to the private "segregation academies" which began to spring up in and around Louisville. White flight, however, proved to be a relatively short-lived phenomenon and the racial balance of the system overall stayed fairly constant after the first year of desegregation. By 1980, five years after desegregation, many observers could point to Louisville as a system where busing had worked. Nearly all the schools were racially balanced, the amount of busing required was diminishing each year, black students' test scores were rising significantly, and white

scores had not suffered during the same period.[8] Fewer than 100 die-hard opponents of desegregation could be mustered that year for the annual anti-busing march down Dixie Highway in the south end.[9]

Advocates of desegregation, especially black parents and students, had hoped for more than racial balance in school buildings, however. During these years, various forms of resegregation within the schools began to occur. In particular, black students began to suffer very high rates of disciplinary suspensions from school. As Table 1 indicates, in the first two years of desegregation the number of black students suspended actually exceeded that of whites, even though white students outnumbered blacks 3 to 1 in the school system.

TABLE 1
Enrollment and Suspension Information
Jefferson County Public Schools, 1975 - 1981

Enrollment

Year	Total Students	Total White	Total Black	Percent White	Percent Black
1975-76	118,505	92,081	26,424	77.7	22.3
1976-77	113,737	87,249	26,488	76.7	23.3
1977-78	108,116	81,844	26,272	75.7	24.3
1978-79	103,332	77,582	25,750	75.1	24.9
1979-80	97,077	71,773	25,304	73.9	26.1
1980-81	93,126	68,387	24,739	73.4	26.6

Suspensions

Year	Total Suspensions	Total White	Total Black	Percent White	Percent Black
1975-76	16,273	7,637	8,636	46.9	53.1
1976-77	14,611	6,743	7,868	46.2	53.8
1977-78	19,168	10,049	9,119	52.4	47.6
1978-79	14,137	7,259	6,878	51.3	48.7
1979-80	10,319	5,160	5,159	50.0	50.0
1980-81	6,445	3,673	2,772	57.0	43.0

Source: Jefferson County Public Schools
Office of Pupil Personnel

The disproportionality improved somewhat in the 1977-78 school year, but only because the 49% increase in white suspensions outstripped the 16% black increase following the introduction of a new, system-wide Uniform Code of Student Conduct. In 1978 and 1979, the numbers of suspensions began to decline, but the black rate crept back to a full 50% of all suspensions in 1979-80.

To black parents, especially those working with the United Black Protective Parents organization, the high rates of black suspensions were symptomatic of a hostile environment in the schools. Judge Gordon had ordered that each school in the district have a staff racial composition equivalent to the system-wide racial balance of the administrative and teaching staff. In practice, this meant that no school had more than one black administrator and that most had fewer than a dozen black teachers by the 1977-78 school year.[10] Black students, who had been accustomed to a staff which was half black in the old black city schools, were now confronted by an overwhelmingly white staff who had, in many cases, never dealt with black students at all. Certainly many white students and their parents had made it clear that blacks were not welcome in "their" schools and racial tension, taunts, and violence were not uncommon in these years. The whole atmosphere was pervaded with the notion that black students had been forced upon unwilling white schools and that disciplinary suspensions from school were the "acceptable" way to rid those schools of this new, undesirable element.

During the 1977-78 school year the problem had reached near-crisis proportions from the perspective of the black community. That year, black suspensions soared to the point where there was one

suspension for every three black students enrolled, compared to a one to eight ratio for white students. In response, a variety of forces in both the black community and among progressive whites began to address the problem, utilizing advocacy in defense of students, parent activism at the local school level, and a county-wide coalition to improve the racial climate and quality of education in the schools. A wide range of groups became involved in these efforts. Within the black community, leadership came from the United Black Protective Parents and the Louisville branch of the NAACP. The Kentucky Commission on Human Rights, the Louisville-Jefferson County Human Relations Commission, the Kentucky Civil Liberties Union, and the Legal Aid Society all provided active support to the coalition's efforts to press for an end to discriminatory treatment in the schools. The Student-Parent Aid and Resource Center (SPARC), an educational advocacy organization sponsored by the Quakers, worked with hundreds of black and low income students and parents to try to help them resolve problems with the school system.

These coalition efforts stressed several approaches. At the level of individual students in particular schools, the United Black Protective Parents and the SPARC staff worked tirelessly to involve parents in the schools and to defend students' rights, especially in cases involving suspension, discrimination, and racist harrassment. In many cases they were effective, pushing administrators and teachers to seek means other than suspension to resolve conflict and discipline problems. At another level, the coalition sought major changes in school system policies. They pressed for greatly expanded training for staff in human relations skills and multicultural understanding.

They pressured the Board and the administration on the suspension issue and pushed for the adoption of a system-wide Uniform Code of Student Conduct. In addition to the discipline code, they demanded and won the adoption of a Student Bill of Rights which stressed equal treatment, due process, and the right of appeal.

In many ways, the activism of the coalition was successful. Many parents learned to become successful advocates for their children in a sometimes hostile educational environment. The new policies provided at least a measure of protection against discriminatory treatment and gave parents, students, and their advocates a leg to stand on in confrontations with school staff. Perhaps most significantly, the use of suspension as the disciplinary measure of choice had declined measurably by the end of the 1979-80 school year, dropping from over 19,000 two years earlier to a total of 10,319 that year. The ratio of suspensions to enrollment also declined substantially, from one suspension for every 5.6 students enrolled in 1977-78 to a 1979-80 ratio of one suspension for every 9.4 students enrolled.

These gains, however, were mitigated by the continued persistence of an excessively high rate of black student suspensions. Though the overall rate had declined, black students still constituted fully 50 percent of all students suspended in 1979-80, a rate nearly double their proportion of the student body. Within the coalition, some divisions began to surface over questions of strategy and tactics. To some, it seemed as if advocacy and pressure politics had accomplished about as much as possible. Though new policies were in effect, many black students still complained of unfair treatment and school officials had begun to appear less accomodating to parents and

community groups. For this segment of the coalition, a strategy which would force the issue more directly seemed to be in order. They began to argue for a class-action lawsuit against the school system to establish more permanent, court-ordered injunctions against discrimination in discipline. Others felt that the experience in the desegregation litigation had shown that route to be extremely costly and time-consuming and that, in the end, even very favorable rulings required extensive community monitoring and pressure to secure adequate enforcement. The litigation process could also backfire; an unfavorable ruling could leave them further behind than ever and would, in their view, make the school system even less responsive to their demands and concerns.[11]

The debate over strategy reached an uncertain conclusion when part of the coalition, led by some members of the United Black Protective Parents, decided to go ahead with the process of litigation. Working with the director and several attorneys from the Legal Aid Society, they filed Mark Stevenson, et al. v. Jefferson County Board of Education, et al. in the U.S. District Court at Louisville. The action named as defendants the Board of Education and the administrative staff of the school system, (collectively, JCPS) plus the United States Department of Education. In July of 1981, the Jefferson County Teachers' Association was added, upon a motion of the plaintiffs, as a defendant. The suit was filed by a group of parents from United Black Protective Parents, led by Novolene Stevenson and Wadie Bivens. Mark Stevenson, a black high school student who the plaintiffs group felt exemplified someone victimized by repeated and unfair suspensions, was listed as the named plaintiff. The suit was

filed as a class action on behalf of:

> A. All students who have been, are presently, or who will be subjected to the disciplinary policies, suspension and expulsion procedures, and transfers complained of and utilized by the defendants; and
>
> B. Black students, who solely because of their race, are presently or have been and will be purposefully subjected to a higher rate of suspensions, expulsions, and transfers, placement in special and alternative programs, as well as more severe penalties.[12]

The plaintiffs in Stevenson alleged that JCPS violated the Fourteenth Amendment rights of all students by "suspending or transferring students to schools and alternative programs without conforming to minimum standards of due process" and that the school system's "disciplinary policies and practices had an intentional discriminatory effect on black students" which violated their civil rights under both federal and state laws. The suit also alleged that the U.S. Department of Education "deprived the plaintiff and the class of their statutory and constitutional rights to be free of racial discrimination in the operation of the public school system by not adequately monitoring and reviewing the policies and practices of the defendants."[13]

Once the suit was filed, both sides began preparing for a trial. JCPS engaged the services of an attorney from the most prominent law firm in the state of Kentucky, who promptly moved to quash certain aspects of the case. The plaintiffs group and their Legal Aid attorneys began to locate witnesses and prepare testimony. As they proceeded with trial preparations, however, three pretrial events occurred which eventually moved the suit away from a trial and onto a track toward an out-of-court settlement. The first was the judge's

summary ruling on the "lack of due process" allegation. The second was a set of reviews and on-site investigations by the U.S. Department of Education's Office for Civil Rights to determine whether or not JCPS discipline policies and practices discriminated against black students. The third was the appointment of a new Superintendent of Schools.

In August of 1980, the Board of Education (upon the advice of their attorney) adopted a revised version of the Uniform Code of Student Conduct. Both sides of the suit then moved to have Chief District Judge Charles Allen rule on whether or not the policy, as written, afforded due process to students subjected to disciplinary procedures. Shortly after the beginning of the 1981-82 school year, Judge Allen ruled that the Code did meet due process criteria, with certain exceptions. He found that some definitions of offenses (e.g., larceny, sexual abuse) required clarification and that time limits for hearings regarding suspensions needed to be specified. When the school administration agreed to immediately revise the Code to conform to the judge's order, this section of the allegations was effectively dismissed in favor of JCPS.[14]

Throughout the first half of 1981, the federal Department of Education reviewed and investigated JCPS's discipline procedures. The plaintiffs in Stevenson thought their case was given a boost in February of that year when Dr. Shirley McCune, the Deputy Assistant Secretary for Equal Educational Opportunity Programs wrote to Superintendent David DeRuzzo informing him that the school system was not eligible for a grant under the Emergency School Aid Act (ESAA) because it had "assigned students to schools on the basis of race and

has maintained racially discriminatory disciplinary policies and practices."[15] The pupil assignment finding was, in fact, erroneous. It was based upon the evidence and findings in the 1974 desegregation suit; those segregative practices had ended in 1975 and the suit was dismissed in the fall of 1980.

The findings regarding disciplinary practices were another matter. From February 2-6, 1981, a team from the Office for Civil Rights (OCR) investigated student suspensions at 16 Jefferson County schools. From this 10 percent sample, they determined that three schools, one at each level, had "discriminated against black students because they received longer suspensions than similarly situated white students."[16] At each of the three schools whose records were examined in detail, black students were suspended for longer periods than whites for the same offense. At Butler High School, for example, black students were given an average of 2.8 days suspension for disobedience and insubordination; white students averaged only 1.6 days for the same offense. At Kammerer Middle School, "one black student was suspended a total of five days for leaving the school grounds without permission on the first offense. One white student who was suspended for this same reason . . . received only a one day suspension."[17] Given this evidence, Dr. McCune ruled that JCPS was ineligible for ESAA funds because it was in violation of both the statute and the administrative regulations which prohibit "imposing disciplinary sanctions - including expulsion, suspension, or corporal or other punishment - in a manner that discriminates against minority group children on the basis of race, color, or national origin."[18] The district was given 14 days to request a show cause

hearing to demonstrate that they were not in violation of the regulations.

On April 6, 1981 the district did just that. The school board attorney and members of the staff went to Washington and convinced the Department of Education that they had collected insufficient data during their on-site review to support a determination of discrimination in disciplinary sanctions. In a letter of April 27, Assistant Secretary McCune revoked her earlier findings and indicated that if the district would submit a copy of their 1975 Court Order regarding student assignment practices, they would once again become eligible for ESAA funds.[19]

The Office for Civil Rights was not finished with their investigation, however. On May 6, W. Lamar Clements, the Director of the Region IV OCR office in Atlanta informed Superintendent DeRuzzo that a team would be arriving in Louisville during the week of May 25-29 to conduct an on-site review to determine whether the district's discipline policies and practices were in compliance with Title VI of the Civil Rights Act of 1964.[20] Clements' letter requested detailed information on six high schools which were chosen "based on the disproportionate number of minority students disciplined." The information requested included data (by race) on suspensions, corporal punishment, busing, withdrawals from school, referral and placement in alternative (special discipline) school programs, and other student records on discipline referrals, in-school discipline, and suspensions.

Eight months later, OCR sent a report of its findings and recommendations to the district.[21] The investigating team examined overall school system data on suspensions and enrollments for 1980-81 and looked in detail at the suspension patterns of Butler, Manual, Iroquois, Moore, Waggener and Valley High Schools. Their analysis showed that, district wide, black students were suspended that year at a significantly higher rate than white students. Blacks accounted for 43 percent of the suspensions, but less than 27 percent of the enrollment. Whites comprised 73 percent of the students enrolled, but only 57 percent of the suspensions. The distribution of suspensions and enrollment in the six high schools studied was almost identical to that of the district. In addition, they found at the high schools that minority students accounted for 61 percent of the students who were given repeated suspensions. When they looked at some of the individual high schools, the disproportionalities were even more striking. Fully 70 percent of the suspensions at Waggener were given to black students, with 61 percent to blacks at Butler. This compared to enrollments of 23 and 26 percent black, respectively. The OCR team concluded that both district-wide and at the sampled high schools black students were being suspended at a significantly higher rate than whites.[22]

Next, they examined the length of suspensions, by race, at the six high schools. Table 2 shows the results of their findings. Here again they concluded that "there is a pattern of assignment of sanctions . . . that results in black students receiving longer suspensions than white students [which is] statistically significant."[23]

Table 2

Length of Suspensions, 1980-81
Six High Schools

Days Suspended	Black	White	Total
1-2 days	142 (26.9%)	135 (30.1%)	277 (28.4%)
3 days	193 (36.6%)	204 (45.5%)	397 (40.7%)
4-11 days	193 (36.6%)	109 (24.3%)	302 (30.9%)
Total	528 (54.1%)	448 (45.9%)	976 (100%)

Source: U.S. Department of Education
Office for Civil Rights
JCPS Title VI Compliance Review, May 1981

The OCR team was determined not to rely on statistical evidence alone, however, and examined other factors in an attempt to explain the disparities they found. First they looked at the types of offenses which resulted in suspensions. They grouped the 25 categories of behavior violations into two types of offense, those which were "objective" and those which were "subjective". The difference depended upon "the degree to which judgment is involved in determining whether the offense has been committed."[24] Disobedience and insubordination, disruption, interference or intimidation of staff, and profanity were defined as "subjective" offenses; all others were deemed "objective". Using this categorization, they found that the majority of suspensions (58%) resulted from subjective offenses and that there was no significant difference in the numbers of black and white students suspended for these offenses.

Their statistical analysis is highly questionable here (and elsewhere), however. They point out that disobedience and insubordination alone accounted for 46% of total suspensions, yet conclude that there were similar percentages of black (48.7%) and white (42.9%) students suspended for disobedience; (one can only speculate as to what happened to the other 8.4% of the students suspended in this category). A table they present two pages later, however, indicates that in fact 57.2% of the students suspended for disobedience were black, with only 42.8% white.[25] Having undercounted the black rate for disobedience by nearly 10%, they then claimed that there were too few cases of any other offense to determine whether or not there were any racial disparities (another odd claim, given that they had nearly 6,500 cases of suspension in the district that year to work with). They quickly concluded that they could "not find any evidence that minority students were being charged with different and/or more serious offenses than white students."[26]

Given that they had uncovered an overall pattern of lengthier suspensions for black students, the investigators next examined the length of suspensions for a similar offense. Their findings on suspensions for disobedience are in Table 3.[27] They concluded from this evidence that "although there appears to be a tendency for white students to receive fewer long-term suspensions than black students, this finding is not statistically significant." Apparently they examined the proportion of suspensions, by race, which were long term (25.3% black vs. 17.2% white) and found that difference not to be unusual.

Table 3

Penalties Assigned by Race for Disobedience
Six High Schools

Days Suspended	Black	White	Total
1-2 days	72 (28%)	61 (31.8%)	133 (29.6%)
3 days	120 (46.7%)	98 (51%)	218 (48.6%)
4-11 days	65 (25.3%)	33 (17.2%)	98 (21.8%)
Total	257 (57.2%)	192 (42.8%)	449 (100%)

Source: U.S. Department of Education
Office for Civil Rights
JCPS Title VI Compliance Review, May 1981

They failed to note that black students received fully two-thirds (66%) of all long-term suspensions for disobedience, a figure even in excess of the already disproportionately high number of black suspensions (of any length) for disobedience. The only way this evidence can be shown to be statistically insignificant is to assume that the overall disproportionate rate of black suspensions is somehow what should be expected. That is a strange assumption to make, given that it is precisely that fact which they were there to investigate in the first place.

The team reached three other conclusions worthy of note and comment. They found that "longer suspensions were given to students who have previously been suspended . . . . As noted above, 61 percent of all suspensions of repeaters involved black students. Thus, the disparities noted in the length of suspensions are, in part, a function of the recidivism level of minority students."[28] Here

again, they assume what they were supposed to investigate. That is, one of the problems with a discriminatory discipline procedure is that black students receive not only more frequent and lengthier suspensions, but also are given repeat suspensions in numbers highly disproportionate to their percentage of the student population. It is the excessive repeat suspensions which lead to the "push-out" phenomenon noted in studies by the Children's Defense Fund[29] and others.[30] After being frequently suspended, black students get the message that they and their behavior are not wanted in a desegregated, but still largely white, school environment. Their eventual leaving of school is more a function of their being "pushed out" than of their dropping out. By giving this process a classic "blaming the victim" twist, the OCR team explained the disparate length of suspensions as a function of black students' penchant for getting themselves suspended repeatedly.

The only other areas OCR looked into were the issues of parental conferences prior to a suspended student's readmittance and the process by which discipline problems were referred to the school administration. In the former situation, there were considerable complaints that the system's requirement of a parental conference before a student could return to school was unreasonable and tended to lengthen a suspension beyond the assigned period. Black parents, in particular, had difficulty getting to the conferences due to work conflicts and/or problems traveling across the county to the schools where their children were bused. Here OCR found that this requirement could operate in a discriminatory manner and recommended that "the district monitor the effect of the parental conference requirement on

minority students and, if necessary, implement alternative measures designed to reduce the effect on such students, e.g., in-school suspension, detention or counseling."[31]

In the area of disciplinary referrals to the office, the investigators were "particularly concerned . . . in view of the disproportionate number of suspensions of minority students." They thought that the referral phase was "particularly susceptible to subjectivity and selective enforcement . . . [and] the opportunity for discrimination is increased."[32] School personnel reported that "certain behavior exhibited by black students was more likely to be considered 'aggressive' by staff members," leading to greater referrals and suspensions. This finding pointed the finger at particular teachers, noting that a few often referred a large number of black students. In this case, OCR recommended that the district begin to maintain records and monitor disciplinary referrals "to identify racial disparities in the number, types, and sources of referrals." They further suggested that, "if warranted, appropriate corrective action should be instituted."[33]

The team's final conclusion followed from their analysis. Though they had found disparities based on race in the frequency and length of suspensions, their other investigations had revealed "no evidence of discrimination in the application of disciplinary sanctions." They believed that their two recommendations would "ensure the nondiscriminatory administration of discipline" and that, given assurances of their adoption, the school system should be found in compliance with Title VI. These findings were forwarded to the new superintendent, Donald Ingwerson, in a January, 1982 letter from OCR's

Clements. Ingwerson responded that he was pleased with the findings and considered the matter closed.[34]

The report on the Office for Civil Rights compliance review was a major blow to the plaintiff's case; it pretty well scuttled any hope they had of winning in a trial. Even though the investigation was conducted by a team working for one of the defendants (who presumably had a vested interest in seeing that the outcome showed no discrimination), the importance of an authoritative-sounding report coming from the major branch of the federal government charged with enforcing antidiscrimination statutes was not likely to be lost on a federal judge. The report found high levels of racial disproportionality in suspensions, yet found no discrimination. The analysis contained in the report failed to read its own data correctly, had significant inaccuracies between its own tables, and provided no statistical evidence to support its assertion that the disparities were insignificant and that discrimination was not present. Nonetheless, it established an apparently imposing piece of evidence to support the defendants, who could certainly breathe easier. At this point, the settlement process which had begun with the arrival of the new superintendent took on even more significance.

Donald Ingwerson took charge of the Jefferson County Public Schools in the summer of 1981. Fresh from a superintendancy in Orange County, California, he was brought in by a school board anxious to rebuild the image of the schools, determined to put the years of conflict over education behind them. The departure of DeRuzzo, who had been Assistant Superintendent during the desegregation struggles, and soon thereafter of Frank Rapley, the architect of the desegre-

gation plan, signaled a clear break with the past. Ingwerson, who was very smooth and highly conscious of public relations, let it be known immediately that he sought to improve the public impression of the schools and particularly to get more positive coverage of the system's accomplishments in the press. The Stevenson case (and the forces behind it) represented exactly the kind of conflict he hoped to circumvent. He quickly made it clear to the plaintiffs' attorneys that he sought to avoid the expense and negative publicity of another major court battle over racial discrimination in the schools and began to make overtures toward a settlement.

The essence of Ingwerson's position was that both sides would be better off with a negotiated settlement agreement. The school system would not have to admit to, or be found guilty of, intentional discrimination. In return, they agreed to negotiate with all interested parties over revisisons in their policies, trying to address the problems complained of in the suit. The plaintiffs, though forgoing the possibility of a trial victory and a binding federal court order, gained the opportunity to directly negotiate with the schools over the form and content of discipline policy and procedures. If the case went to trial and the plaintiffs won, the judge would probably focus on similar policy revisions; there was no guarantee, however, that Judge Allen would order sweeping revisions. His earlier order on the due process content of the discipline code indicated that he saw little wrong with existing policy. That ruling, combined with the April rescinding of the initial OCR finding of discrimination, encouraged the plaintiffs and their attorneys to believe that their best chance lay in the negotiation process.

When school began in the fall of 1981, the superintendent initiated the formation of a major committee which came to be known as the Handbook Committee. They were charged with developing materials (to be published in the form of a Student Handbook) which would "enhance the understanding of students, parents, and school staff in the areas of expectations and responsibilities" for conduct and discipline.[35] As the committee convened in October of 1981, the process of reaching a settlement agreement in the litigation over Stevenson had begun. The negotiations would take over a year, involving countless hours on the part of school staff, parents, students, community representatives, and members of the plaintiffs' group.

The Stevenson case had grown out of a period of intense racial strife and antagonism surrounding the schools. Direct, activist community pressure had brought some changes in both policy and procedures, resulting in far fewer suspensions overall and a decreasing rate of black suspensions. Litigation had seemed to hold out the promise of a bigger stick, a more lasting and binding restraint on the system's ability to act in arbitrary, capricious, and discriminatory ways toward students it seemingly didn't want or couldn't tolerate. By the fall of 1981, the process was back to one of negotiation between the parties, though now it was more formalized, more a part of the institutional process of school policy formation. In one sense, the litigation had forced the district to bargain with their critics in the community. At the same time, as we shall see, it gave the school people more control over the process, allowing them considerable leeway to define the agenda for policy revision and to

determine the scope of issues which were to be considered legitimate. In that sense, though they had been forced to play, the ball was now back in their court.

II. POLICY REVISION AND THE SETTLEMENT AGREEMENT

From October 1981 through November 1982 the process of policy review and revision and the negotiation of the settlement agreement took place. In reality, the two processes were little more than a single set of activities, given that the heart of the agreement was the revised set of discipline policies and procedures hammered out during this period. The major items included in the settlement agreement were the following:

- a new Student Handbook to be distributed to all students and parents;
- a major revision in the Uniform Code of Student Conduct;
- establishment of a system to monitor disciplinary referrals;
- creation of a standing Discipline Review committee to monitor discipline procedures and JCPS compliance with the terms of the Stevenson settlement;
- new procedures regarding discipline of handicapped students;
- committments by JCPS to modify some procedures regarding parent conferences, placement of handicapped students into special education programs, placement of students into alternative school programs, and yearly removal of student disciplinary records;
- a committment by JCPS to provide extensive in-service training to staff on the new policies and procedures.

Both the Student Handbook and the revised discipline code were the product of two policy review committees. The Handbook Committee was in fact composed of two sub-committees: a staff committee and a policy advisory committee. The former had three principals and three

teachers as its members, one each from an elementary, a middle, and a high school. One principal and one of the teachers were black, and two of the teachers were members of the Executive Committee of the Jefferson County Teachers Association and thus represented the perspective of the teacher's union (which was also a defendant in Stevenson). This sub-committee drafted text and recommendations for submission to a policy committee composed of two of the Stevenson plaintiffs, leaders of SPARC, the NAACP, the Lincoln Foundation (a black educational foundation), and the National Conference of Christians and Jews, all of whom had been involved in discipline issues and the coalition efforts preceding Stevenson. In addition, the policy committee had a leader of the PTA, a former school Board member, and several parents and students as members. Stuart Sampson, the district's Director of Pupil Personnel, served as the key central administration figure on the committees and acted as liaison between them and the superintendent.[36] The discipline code revision committee which convened in June of 1982 had much the same composition, indeed many of the same people, as the original Handbook Committee.

The Handbook Committee sought to provide a mechanism by which both system-wide and local expectations and procedures could be communicated to all students, parents, and staff. Their major premise was that if uniformity in regulations, disciplinary measures, and student behavioral expectations could be achieved across the district, a good deal of the variation in both expectations and sanctions between schools could be eliminated. This seemed especially important in light of student complaints that, given the extent of busing and

changes of schools, they frequently didn't know what to expect from school to school. Parents complained that rules were never made clear to them or their children so they were often at a loss to participate in the discipline process in a knowledgeable and constructive way. The vehicles chosen to convey this information were a school folder for students and a calender for parents containing 24 "statements of responsibility" in two sections entitled "Our Part" and "Your Part".

The Handbook Committee worked for over 5 months to produce the content of the handbook and the parent guide. In reality, they overhauled much of the policy related to student behavior and discipline for the whole district. They divided the handbook into two parts: system-wide information and information particular to each local school. At the district level, the committee addressed the following areas: grading procedures, bus riding regulations, personal appearance, student searches, personal property, transfers and withdrawals from school, school cancellations, student rights, homework, attendance regulations, and expectations for student behavior. Regulations and information regarding each of these areas were clearly spelled out in non-technical language, with a good deal of emphasis placed upon the beneficial relationship between orderly, responsible behavior and educational success. Each school was also to have a place where local information could be displayed; here the emphasis was more on school procedures (e.g., arrival and dismissal times, special activities, school services, special days, parent involvement, and the like) than on discipline.[37]

The policy committee also adopted a working philosophy which held that children at different ages and grade levels should operate under different behavioral expectations, reflecting their varying levels of

maturity and ability to assume responsibility. Thus, both the system-wide policies and the local information differed at each school level, becoming more complex and presuming a greater degree of behavioral maturation as students progressed toward high school. The local middle school section, for example, stresses student responsibilities, respect for others, and prohibitions on alcohol, tobacco, drugs, gambling, weapons, profanity, and access to "off limits" areas; the elementary school version mentions none of these. The system-wide high school version, on the other hand, details graduation requirements, permission to leave campus, and extensive information on the guidance program, all of which are of greater concern to upper level students.

The key feature of the handbooks was the development and inclusion of a matrix of behavior violations and disciplinary measures. A copy of the chart for the high schools is reproduced in Table 4. The matrix was designed to reflect increasingly severe sanctions for more serious transgressions of the discipline code. It also reflected the policy committee's view that a wide variety of disciplinary measures should be employed prior to more severe and coercive sanctions such as suspension, assignment to an "alternative" program, or expulsion. Thus, each chart was accompanied by a list of informal methods of discipline which were to be followed before turning to more formal, punitive measures. Again, as in the regulations and information sections, different grade levels had different matrices for disciplinary actions.

Table 4

Matrix of Behavior Violations
and Disciplinary Measures
JCPS Uniform Code of Student Conduct

HIGH SCHOOL BEHAVIOR VIOLATIONS / ACTIONS	In-school Discipline Measures	Parent/Guardian Conference	Short-term Suspension	Long-term Suspension	Referral to Alternative Program	Expulsion Procedure Initiated
Unexcused Tardiness (# of occurances)	3	6	9			
Cutting Class (# of occurances)	1	2	3			
Failure to sign in or out of school	*	*	*			
Deliberate disruption	*	*	*			
Fail to follow directives	*	*	*			
Forgery	*	*	*			
Profanity/vulgarity	*	*	*			
Vandalixm ($100 or less)		*	*			
Leaving school grounds			*			
Smoking in unauthorized areas			*			
Gambling			*			
Fighting			*			
Repeated short-term suspensions				*	*	*
Intimidate/interfere with staff or student				*	*	*
Fight or strike faculty				*	*	*
Use or possession of drugs, alcohol, or fireworks				*	*	*
Violate conditions of short-term suspension				*	*	*
Theft or vandalism (over $100)				*	*	*
Violate conditions of long-term suspension					*	*
Repeated long-term suspensions					*	*
Assault or sexual abuse						*
Arson						*
Extortion or robbery						*
Possession of weapons						*
Sale of drugs, alcohol, or fireworks						*
Bomb threats, false fire alarm						*

Two aspects of the policies encapsulated in the handbook became major sources of contention for the committee. The school staff members argued strongly for the re-introduction of suspension as a penalty for attendance related offenses (tardies and class cuts). These had been removed as suspendable offenses in an earlier revision of the discipline code, in part at the behest of the community coalition. Staff now argued that they had insufficient means with which to deal with these problems and wanted to be able to suspend students for violating attendance regulations. The community members of the committee were solidly opposed to this move, arguing that it made little sense to throw kids out of school for not coming to school or class. They, on the other hand, were anxious to interject a mandatory parent conference into the discipline process prior to suspension for most offenses. They believed that one key to the goals of maintaining good discipline, reducing suspensions, and guarding against discriminatory treatment was greater parent involvement at an early stage of the process. The staff members, by contrast, thought this requirement would hamstring their ability to mete out appropriate punishment without excessive delay and/or parental interference. After much debate, a compromise was struck whereby the attendance-related offenses were included as suspendable offenses, but the parent conference was also inserted as a buffer prior to suspension. Both sides expressed misgivings about the feasibility of these provisions, but agreed for the sake of the compromise.[38]

The policy committee was able to address most of its concerns through the policies enunciated in the student handbook. They also dealt with a number of problems which were raised by the allegations

in Stevenson and which they felt should be addressed by the administration and the Board of Education. In their final report to the Board, they submitted the text of the handbooks, the statements of staff and parent responsibilities, and a list of special recommendations. Their special recommendations may be summarized as follows:

- establish alternatives to suspension, including time-out rooms and detention, at the middle school level; operate these programs under district-wide guidelines;
- consider setting higher "academic and/or citizenship requirements" for participation in high school extracurricular activities, including athletics;
- ensure that appropriately qualified staff are assigned to the "alternative" (discipline-related) programs and schools;
- stress the new pre-suspension parent conference in staff training and communication with parents;
- revise the discipline code for clarity, incorporating policy changes embodied in the handbook;
- reprint and distribute the Student Bill of Rights to all staff and students; and
- revamp both entry and exit guidelines for the alternative discipline programs, insuring both consistency and due process.[39]

The recommendations regarding staffing and entry/exit criteria for placement in the alternative programs was a direct response to complaints from the black community that the so-called alternatives to the regular school program were nothing more than "dumping grounds" for black students who teachers didn't want in their classrooms. Parents also complained that the staff assigned to these programs were there primarily because they were "tough, no-nonsense" types who were frequently confrontational toward black students with behavior

problems. The committee felt that their recommendations, if implemented, would clarify the purpose of these programs, provide some due process protections, avoid arbitrary or discriminatory assignment of students, and see that staff were assigned because of their demonstrated educational capabilities in dealing with students having problems in the regular program.

In addition to the above recommendations, the policy committee also made a separate recommendation in March 1982 regarding student search procedures. That spring, the Board of education reeled from press reports that two elementary school teachers had strip-searched a whole class of students in a search for allegedly stolen lunch money. Responding to the outcry from parents and the press over the incident, the Handbook Committee recommended that the Board adopt the following policy statement:

> School officials have the right to search students or their property if the officials have reasonable suspicion that the student may be in possession of something that violates school rules or endangers others. The purpose of searching students, their belongings, lockers, desks, or automobiles is to protect the property and safety of others and/or to maintain the ongoing educational process of the school. Students have the protection, as do all citizens, against unreasonable search and seizure of their property. Searches will be used when other techniques to remedy the situation have been exhausted, or when there is an immediate danger to life or safety.[40]

Anxious to calm the public over the issue, the Board quickly adopted the recommended policy statement, along with more detailed, explicit procedures which governed staff behavior.

When the Handbook Committee released its final report, they stated that they had developed "a method to address the responsibilities of staff, students, and parents in the educational

process" and that "the product exemplified a give and take process by all groups concerned."[41] From the point of view of the school system, the report embodied their primary emphasis that students understand and live up to their responsibilities, exercising restraint and self-discipline. The community members of the committee had sought more flexible discipline methods and greater clarity and uniformity in policy and procedures. For the schools, the goal was to "improve" student behavior; for the community representatives, to restrain the schools from punitive, discriminatory, and capricious discipline practices. Both sides bought into the notion that revised policies were the primary means to achieve their respective ends, even though the ends followed from entirely different premises. Superintendent Ingwerson reported to the Board that the recommendations in the final report were "unanimously supported by members of the committee."[42]

When the core of the Handbook Committee reconvened in June of 1982 as the Discipline Code Revision committee, the different perspectives on both the problem and the possible solutions began to surface in earnest.[43] The central office staff argued for a limited agenda in revising the Code, simply wanting to make it more clear and in conformity with the policy changes contained in the Student Handbook. The teachers seemed to want to give themselves more latitude in discipline decisions and to be free from excess scrutiny from parents and principals, yet also wanted greater support and backing from their local administrators, who they felt should assume more direct responsibility for the discipline process. The principals, on the other hand, wanted to have sanctions more

explicitly spelled out, to make the overall discipline policy more firm and control oriented, and to establish a clear "division of labor" in discipline between themselves and the teachers. Finally, the community representatives saw the revision of the Code as an opportunity to provide greater safeguards of student rights, to build in more significant degrees of parent involvement, and to reduce the level of harsh and punitive disciplinary actions in the school system. Though there were cross-overs and shifting alliances amongst members of the committee, (usually on an issue-by-issue basis), more often than not the members fell back on what they perceived as the respective interests of their "role" group or constituency.

In the end, virtually every word in the Code was subjected to scrutiny and revision. It is a detailed policy document, a full twelve pages long, so I can do little more than highlight some of the more significant changes and provisions of the revised Code here. It begins with a message from the Superintendent, who pledges the schools "to respect the rights and feelings of parents and guardians and students, to provide the best possible educational experiences for all students, and to administer this discipline code in a firm, fair, consistent manner."[44] The "Introduction" declares that students have a right to an education and that they may not be deprived of this right "without good cause in which procedural due process is observed." Both the "Superintendent's Message" and the "Introduction" also stress that students have corresponding responsibilities regarding their behavior while in school. The "Introduction" also emphasizes that the code shall be enforced equitably regardless of the race, gender, or disability of a student and, in a unique clause,

states that the principal shall "provide appropriate arrangements for all non-English speaking, blind, deaf, or nonreaders to become familiar with . . . [the] Code."[45]

A section on local school rules was inserted in response to complaints that discipline procedures varied all over the county from school to school. In a nod to the school staff, the Code allows each school to establish some rules and disciplinary measures of its own, but forbids them to "replace or contradict the provisions of" the Code. Bowing to pressure from the community, the committee specified that all local school rules must be "developed or amended" in a "participatory process which includes parents, teachers, and students" and be approved by the appropriate Regional Superintendent. This blend of local autonomy, safeguards against arbitrary and capricious rules and procedures, and parent involvement at the earliest stages of the discipline process was typical of the give and take between the various interests on the committee.

Very early on in the text of the Code there is a general assertion regarding the due process rights of students. It indicates that students have the right to be informed of charges and evidence, to be given the opportunity to present their own case, and to appeal any decision. This section specifies that the schools must respond, in writing, to written appeals of disciplinary decisions. In a move which helped parents a great deal, it also listed the channel of appeals, all the way to the Board of Education. The latter listing was also seen as helpful in keeping discipline matters at the local school level, where the committee thought most problems could (and should) be resolved in their beginning stages.[46]

Following the preliminary sections, the Code gives a detailed account of the whole discipline process, spelling out the responsibilities of teachers, counselors, and administrators, providing explicit guidelines for the use of corporal punishment, suspension, alternative programs, and expulsion, and indicating the required procedures for parent conferences and formal and informal hearings. Most of these sections represented major revisions in thinking and policy; I shall try to highlight the more significant changes and the philosophy behind them.

The sections on both teachers' and administrators' responsibilities and scope of action was hotly debated among the staff members of the committee. Both the teachers and the administrators wanted to have the Code spell out the others' responsibilities. The principals, especially, seemed to want some way to measure a teacher's effectiveness in handling discipline and to be able to confront a teacher directly if, in the principals judgement, she or he had taken insufficient measures to deal with the problem at the classroom level. They claimed that, all too often, many teachers' immediate response to a discipline problem was a referral to the office. Thus, the principals wanted, and got, an explicit list of measures which "a teacher [was] responsible for utilizing . . . to maintain discipline." The list of in-class measures included:

- Give a verbal reprimand
- Notify parent/guardian - confer with as necessary
- Assign constructive assignments/tasks
- Require a student-teacher conference
- Develop a behavior contract with the student
- Refer the student to the counselor
- Administer corporal punishment (according to approved guidelines set forth in [the] Code) when other in-class measures have proven ineffective.[47]

BEST COPY AVAILABLE

The teachers argued that this amounted to a new list of duties and responsibilities which should properly be subject to negotiation in their union contract, not just be established by a revision in school system policy. They were worried that such a list of responsibilities could be used by administrators to build a case against an out-of-favor teacher, and that it took away some of the teacher's discretion in making professional judgements about how to best handle discipline.

The administrators responded that these sorts of responsibilities were already an assumed part of a teacher's normal duties and that the explicit list simply provided principals with a checklist of measures which would be helpful to both as they discussed effective discipline strategies. They did admit that such a list could be used to exercise their supervisory function over ineffective teachers, but that such supervision would be helpful, not punitive. Though they were adamant on the inclusion of a teacher's list, they had to compromise by agreeing to a similar list which spelled out an administrator's responsibilities. Their list of measures included:

- Temporarily remove school privileges (e.g., participation in pep rallies, assemblies, etc.)
- Change the student's schedule (with parent notification)
- Temporarily separate the student from other students
- Recommend a transfer to another school and/or program
- Assign the student to after school detentioh
- Assign the student to a time-out room during the school day
- Establish in-school counseling or evaluation
- Administer corporal punishment (according to approved guidelines set forth in [the] Code) when other in-school measures have proven ineffective
- Deny the student access to school bus transportation (for bus misconduct)
- Provide a constructive special assignment.[48]

The community representatives and the parents on the committee were fairly ambivalent about the dispute between the staff over these issues but were, at the same time, advocates for the inclusion of the specific lists of disciplinary measures which would be taken. On their view, the lists clarified for students and parents what would happen in the discipline process and also specified for staff a wide range of measures which they could utilize short of the exclusionary actions of suspension or expulsion which were the real target of their concern. The goal of the community people was to promote flexible, more constructive, less punitive disciplinary actions, in the hope that a more humane, less control-oriented atmosphere could develop in the school system.

Perhaps the hottest, most thorny debate in the committee's meetings centered around the question of corporal punishment. The handbook committee had conducted an informal survey of principals to determine the extent to which corporal punishment was used in the district; the results indicated that its use was widespread at all levels. A lawsuit against a prominent teacher that year alleging she had abused a child by excessive paddling also brought heightened public attention to the issue. The debate in the committee centered around several issues: what kinds of corporal punishment should be allowed, whether there should be limitations on the number of "swats", what kinds of protections should be provided for students, whether parents should have the right to object to its use, whether students should be allowed to choose corporal punishment in lieu of some other form of discipline, and finally, whether corporal punishment in any form should be abandoned altogether by the school system.

BEST COPY AVAILABLE

The hardest line on the issue was taken by the community representatives, who advocated banishing this form of punishment altogether. They argued that it was non-constructive, that it modeled a violent, aggressive behavior for resolutions of disputes between students and staff (thus perhaps provoking greater student violence), and was an outmoded, barbaric form of social control which had successfully been abandoned by more enlightened districts (including several whole states, such as New Jersey). They also addressed the potentially racist implications of white staff hitting black students, arguing that even if there were no racist intentions, the appearance of racial overtones in such a situation were volatile.

The staff position was mixed, though as a group they thought it unfeasible to outlaw corporal punishment altogether. Only one of the teachers, and none of the principals, admitted to ever paddling children themselves. They were aware, however, of how frequently their colleagues resorted to this form of discipline in their efforts to keep children in line. Thus they were in the somewhat uncomfortable position of personally opposing its use, yet being unwilling to prevent others from doing what they themselves thought should not be done. The most typical argument seemed to be that until positive, workable alternatives were in place, accompanied by extensive staff training in their use, then corporal punishment was an unwanted, but necessary, measure to keep control in the classroom. The counter argument that no one would seek new methods until the old ones were no longer sanctioned did not sway the staff.

When it became clear that no consensus would emerge in favor of abolition, the committee turned toward policies which would restrict the use of corporal punishment and safeguard children against physical and emotional abuse. They quickly agreed that there should be sharp limitations on the kinds of physical punishment which could be inflicted on students. Virtually everyone in the room could recount having witnessed or heard tales of teachers pinching, paddling, rapping knuckles with rulers or pointers, kicking, slapping, arm twisting, giving "dutch rubs" on the head with knuckles, and otherwise using various forms of physical force to compel an unruly student into obedience. The committee agreed that the only "acceptable" form of corporal punishment should be "swatting a student on the buttocks with a wooden paddle" and that no other form would be approved by JCPS. An early draft of this section of the code also called for no more than three "swats" to be administered at any one time. The teacher's union, afraid of lawsuits over excessive paddling, sharply chastised their representatives for agreeing to this position; the teachers on the committee subsequently withdrew their support for a limitation on the number of allowable "swats" and, without their support, no limitation could be included.

A further problem with corporal punishment was that in many schools students were offered a choice between "swats" or some other form of punishment, including suspension. The survey of principals indicated that that white male students would opt to "take their licks" much more frequently than would black males. The appeared to be an interesting reversal of the national trends which showed corporal punishment being used more frequently against minority

students. In Jefferson County, however, it seemed as if black males would far rather take a suspension than be hit by a white staff member; thus allowing this choice may well have been contributing to the higher rate of black suspensions. In addition, it appeared that allowing students to choose paddling often made it the discipline method of choice, so that neither teachers nor students had to work very hard to come up with more constructive alternatives to deal with problematic discipline situations. Finally, some members of the committee found it inappropriate to teach students that they should choose to be hit by a person in authority as a way of resolving a conflict.

The result of all of these discussions was wording in the Code designed to limit the use and severity of corporal punishment. A portion of the code read: "Corporal punishment must be reasonable and not intended to injure the student. Corporal punishment is considered a serious action, a last line of in-school correction and not a negotiable item that may be chosen by the student as a substitute for any other discipline measure."[49] The discipline matrices included in the student handbook and the new Code also stated that "If corporal punishment is used, it should never be as a first line of correction."[50] Though the committee was unwilling to abandon corporal punishment completely, they did want to send a clear message to teachers, administrators, and students that the new policies insisted that it be a method of last resort.

Several people on the committee also believed that it was an important parental prerogative to be able to protect their child from corporal punishment at the hands of school officials. Many parents,

it was felt, did not use physical punishment at home and would not want their discipline practices undermined by the school. Accordingly, a new section of the Code was added which stated:

> Each year, parents/guardians who object to corporal punishment shall confer with the principal and make a formal, written request that corporal punishment not be administered to their child, and the request will be honored by all school personnel. A list of exempted students will be maintained in the school office.[51]

The requirement that these parents confer with the principal was inserted as a safeguard against students forging a parental objection to escape corporal punishment.

Finally, the committee drafted language to provide protections for students. They stated that corporal punishment must be "administered in private and witnessed by another teacher or administrator" and that whoever did the paddling must inform the student's parents (in writing or by phone) of the reasons for the punishment and the name of the witness. For the first time, the Code also stipulated that written records of corporal punishment be maintained in the student's disciplinary file.[53]

The rationale behind most of these revisions was to do everything possible short of outright abolition to restrict the use of corporal punishment and to protect students from its abusive use. While the staff members of the committee were willing to go along with these provisions, most of which were restrictions on teachers and administrators when compared with then-current practice, they also wanted to assert their "right" to use physical force against a student if necessary. Thus, immediately following the section on corporal punishment in the Code, a section entitled "Use of Reasonable Physical

Force by Staff" was inserted. It read: "School personnel may, under the authorization of the Board of Education (see Kentucky Revised Statute 161.180) use reasonable physical force to restrain a student whenever immediate action is essential for self-defense, preservation of order, or protection of other persons or property."[54]

As the Code progressed through the various phases of the disciplinary process, from in-class measures, administrative measures, and corporal punishment, an important new section regarding parent conferences was inserted. It called for a parent conference, at a mutually agreed upon time, whenever students repeatedly misbehaved. It was the hope of the committee, following the lead of the Handbook Committee, that early direct involvement of parents prior to suspension would lead to less drastic resolutions of problems. The Code suggests that "the purpose of the conference is to identify the source of the problem, to arrive at fair, effective solutions, and to improve student behavior." It provides for the student to be "afforded the opportunity to describe the problem as he/she sees it, and to suggest actions that would resolve the problem." Parents and staff were to be given the same opportunity and "strict courtesy [was to] be observed by all participants in the conference." This section was seen as an explicit encouragement to parents to take part in working with the school and their children to resolve discipline problems short of suspension.[55]

In a further attempt to ensure that students were given every opportunity to exercise their due process rights in cases which resulted in suspensions, the Code specified detailed requirements for both informal and formal hearing procedures. For suspensions of 1-10

days, a student was to be granted an informal hearing before being suspended. The student was to be "informed of the charges . . . provided an explanation of the evidence supporting the charges . . . . [and] provided a reasonable opportunity to present his/her case." Parents were to be informed, by both phone and mail, of the decision to suspend within one school day of the informal hearing. In cases where a student was to be suspended for 11-20 days, a formal hearing was required within three days of the decision to suspend. Here much more formal procedures were to be followed, including a written statement of the charges and full disclosure of any evidence, the right of the student to be represented by counsel, to face his/her accusers, to call witnesses, and to cross-examine witnesses on both sides. The formal hearing was to be conducted by impartial official(s) appointed by the Superintendent who would make a prompt decision and provide a written copy to the student and parents.[56]

Special procedures were required to guarantee the rights of handicapped students and to bring the Code into conformity with P.L. 94-142 (the Education for All Handicapped Children Act). Federal law required that no handicapped children be excluded from school for reasons related to his or her handicapping condition. Therefore, the Code had to be revised to assure that no handicapped child would be given a disciplinary suspension unless an Admission and Release Committee (ARC) had been convened (as required by the law) to determine whether or not the problem behavior was related to the student's disability. The ARC was a committee composed of school staff, special education professionals, and the child's parents. It had the responsibility for evaluating the child's educational program

and progress. If the ARC determined that the behavior was related the handicapping condition, then no suspension could be given and the student's program would have to be considered to see whether it was appropriately dealing with the behavior problem. If the problem was determined to be unrelated to the handicapping condition, then the normal disciplinary procedures as set forth in the Code could be followed. The only exception to this rule was in cases where suspension was "essential to protect persons or property or to avoid disruption of the ongoing educational process," but even then, the student had to be granted an informal hearing and an ARC had to be convened "as soon as practicable."[57]

One final disciplinary measure, short of expulsion from school, was added to the Code. Following the recommendation of the Handbook Committee, the revised Code for the first time contained a description of alternative programs to which a student could be assigned "if in-class and in-school measures, a parent/guardian conference, and/or suspension do not resolve behavior problems." These were the Youth Development Program - "an in-school drop-out prevention program", the Alternative Program Classes - "designed to serve students with problem behaviors", and Project Way-Out - "a distinct alternative school serving the needs of students who cannot find success in a regular school setting or those displaying serious behavior problems."[58] The Code did not, however, specify the conditions under which a student could be entered into, or could exit from, any of these programs.

The final major revision of the Code was a redefinition of the "behavior violations" for which a student could be disciplined. There had been a great deal of criticism of the list of offenses in earlier versions of the Code, alleging that the definitions were unclear and excessively legalistic. The committee hoped that redefining them for the sake of clarity would result in a better understanding on the part of both students and staff and would make the enforcement of discipline less subjective. The revised list of violations reads as follows:

- Failure to follow school or class rules
- Unexcused tardiness to class or homeroom
- Non-attendance of class
- Failure to sign in or out of school
- Leaving school grounds without permission
- Forgery-falsifying documents or signatures
- Student disruptions - any deliberate action by the student which results in serious disruption of the educational process
- Failure to follow directives - the willful refusal by a student to respond to any reasonable directives of authorized school personnel (including failure to identify oneself) or to accept in-school disciplinary measures
- Smoking in unauthorized areas
- Gambling - games of chance or skill for money or profit
- Profanity and vulgarity
- Fighting - the use of serious physical force between two or more students
- Fighting or striking school personnel
- Intimidating or interfering with school personnel/students; preventing or attempting to prevent school personnel or students from performing their responsibilities through threats, violence, or harassment
- Assault - intending to or causing physical injury to another person by means of a deadly weapon or dangerous instrument, or intentionally causing physical injury to another person. Physical sexual abuse of any kind is considered assault
- Theft - stealing property belonging to the school or another person
- Extortion - the obtaining of property from an unwilling person by intimidation or physical force
- Robbery - theft involving the use of physical force, deadly weapons, or dangerous instruments

- False activation of a fire alarm or making a bomb threat
- Vandalism - damaging or defacing school property or the property of school personnel/students
- Arson - intentionally damaging school buildings or property of another person by starting a fire or causing an explosion
- Use or possession of drugs, alcohol, or fireworks
- Sale of drugs, alcohol, or fireworks
- Possession of weapons - carrying, storing, or using deadly weapons on school property.[59]

As the discipline code revision committee completed its work in July of 1982, they were fairly confident that they had accomplished significant reforms in the school system's policies. The formal and informal due process rights of students were strengthened considerably. Students were protected from unreasonable searches of their person or property. Parents and guardians were to be involved in the disciplinary process at an early stage, particularly in cases which might result in a suspension. The specific disciplinary actions that teachers and administrators could take were clearly spelled out. Specific consequences for particular behavior violations were listed in the Code and were now uniform throughout the district. The disciplinary measures which would be taken were to vary, however, according to the age and grade level of the student, in an effort to reflect different levels of maturity and responsibility. Corporal punishment was restricted by outlawing all forms of physical punishment other than paddling, by denying students the choice of taking corporal punishment instead of some other more constructive form of discipline, by allowing parents to object to its use, and by building in procedural safeguards for students. For the first time, the problem of discipline for handicapped students was addressed. Overall, the Code emphasized a wide variety of disciplinary strategies

which should be employed short of severe and punitive actions such as suspension or corporal punishment.

The committee was satisfied that, on paper at least, some positive steps had been taken to protect student rights and to guard against capricious, arbitrary, and discriminatory discipline procedures. They felt that the new Code was more clear, more uniform, and less susceptible to subjective interpretation. The attorneys for both the school system and the plaintiffs in Stevenson had been kept apprised of proposed revisions throughout the committee's deliberations and agreed informally to allow the final draft to be presented for adoption to the Board of Education. On August 9, 1982 the Board approved the Code, directing the Superintendent to train staff in its use in time for implementation as the school year began in September.

III. THE MONITORING PROCESS

While the plaintiffs and their attorneys had participated in, and agreed to, the policy revisions which were to constitute the principal points of the Stevenson settlement, they were seriously concerned about the implementation of the new policies. Throughout the fall of 1982, the attorneys met to hammer out procedures to monitor compliance with the settlement agreement. A number of agreements were reached, with the main ones being the creation of a system to monitor disciplinary referrals from the classroom to the school office and the establishment of a standing Discipline Review Committee.

Acting on the recommendation of the Office for Civil Rights investigative team, the attorneys worked out a process by which every source of disciplinary referrals could be monitored for racial disproportionality. The rationale was that if excessive referrals of black students could be stopped then the problem of disproportionate suspensions could be dealt with at the source. The OCR team felt that teachers were typically the main actors who dealt with significant behavior problems which could result in suspension; therefore their disciplinary actions were probably the most problematic and most likely were the source of disproportionately harsh discipline against black students. The referral process, being the signal that a teacher felt a problem was too severe to be handled in the classroom, seemed the logical place to start monitoring. As far as anyone knew, the referral monitoring process instituted in Jefferson County was the first of its kind in the country.

The monitoring system was fairly straightforward. Teachers were instructed to use in-class discipline in cases of tardiness, disruption, failure to follow directives, and profanity/vulgarity and as much as possible for other offenses. If these measures failed, students were to be referred to the administration for discipline. New referral forms were created, with strict instructions to be followed in filling them out. The forms were to record the referral source's ID number, the race of the student, and, if applicable, the special education category of the student. The school was to keep three copies of each referral form: one in a central referral file, one filed by referral source, and one for the student's discipline file. The student and the referral source were each to receive a

copy, and the school counselor was to review and initial the school's copy before it was filed. Each day, the appropriate administrator at each school was to record the information from the day's referrals in a referral log and was instructed to maintain an index recording the ID number assigned to each referral source. As of November 30, 1982 all schools were to submit compiled disciplinary referral logs to the district's civil rights Compliance Unit on a bi-monthly basis. It was the job of the Compliance Unit to monitor referrals via the logs for the entire district, school by school, referral source by referral source.[60]

The key to the monitoring plan lay with the definition established for racially disproportionate rates of referrals. The attorneys, following the findings in the OCR investigation, accepted the following definitions: a school's referrals were disproportionate if the percentage of black students referred was 20 percentage points higher than the percentage of black students enrolled in that school; an individual's referrals were disproportionate if that source referred 10 or more black students in a month and the proportion of referrals for black students was 20 percentage points higher than their proportion of the school enrollment.[61] Thus, even though the disproportionality complained of in Stevenson had hovered precisely around that 20 percent difference between black suspensions and enrollments, OCR and the attorneys accepted that high a rate of black disciplinary referrals as the expected, normal rate. No explanation was offered as to why one should expect to see black students in trouble at a rate 20 percent higher than their proportion of the student body. Once again, school officials (relying on the OCR

report) insisted that the very problem they were supposed to monitor and investigate was the norm.

If a school or a particular person was found to have exceeded these very lax boundaries of disproportionality, the Compliance Unit, in cooperation with local and regional school officials, was to initiate an investigation and, where appropriate, recommend corrective action. The investigation was to review records, interview all parties involved, analyse the extent to which classroom discipline measures had been used, and consider whether decisions may have been made on a subjective basis. If corrective action was deemed appropriate, it had to be recommended to the Regional Superintendent, who had to approve it (subject to the terms of the union contract) and see that it was carried out "as soon as reasonably possible." The corrective action was to be monitored on a monthly basis for three months.[62]

The monitoring program was to be put in place for 2 years, during which time the Discipline Review Committee could suggest revisions in the procedures. The Compliance Unit was also to make an annual report to the Review Committee reporting any schools or referral sources who were found to be violating the prohibitions against disproportionate referrals of black students, and any actions which were taken to correct particular problems. After four years of monitoring, the Board of Education was to have the power to review the whole process, to modify it, or to eliminate it altogether.[63]

Given that the monitoring program was mostly in-house and relied on a very weak definition of disproportionality, the plaintiffs and

their attorneys put most of their hopes for serious compliance and monitoring on the standing Discipline Review Committee. Initially, this committee was to be an extension of the discipline code revision committee, with JCPS committing itself to maintaining "representatives of the community and representatives of school administrators and teachers on the Review Committee." The settlement agreement left it up to the Review Committee to set its own frequency and place of meetings, as well as its agenda. It stipulated that the overall mandate of the committee was to include "review of and recommending of clarification and modification of all policies and practices of the JCPS relating generally to discipline and the implementation of discipline."[64] At the insistence of the plaintiffs' attorneys, a suggested agenda was inserted into the agreement to give guidance to the Review Committee. The proposed agenda included many of the issues around which the school system had refused to budge as their attorneys pushed toward a quick settlement in the final months. The plaintiffs' attorneys hoped the Review Committee could negotiate stronger provisions than they had achieved during the policy revision process. Their suggested agenda for the Review Committee included:

- Changes in the referral monitoring system, including lowering the definition of disproportionality from 20% to either 15% or 10% or even to anything above the rate of black enrollment.
- Considering monitoring individual staff members who had disproportionate referral rates but less than 10 referrals in a bi-monthly reporting period.
- Determine whether JCPS should take steps to ensure a "participatory process" in the establishment of local school rules.
- Consider monitoring compliance with the new suspension and expulsion procedures for handicapped students, with the possible need for greater staff training in the use of these procedures. Also consider whether any discipline of special education students should automatically trigger a review of the student's Individualized Educational Program.

- Consider the appropriateness of continuing to make tardiness a suspendable offense.[65]

This agenda is essentially a list of those things the plaintiffs thought should happen but couldn't win in either the policy revision committees or in negotiations with the JCPS attorneys. They had foregone the possibility of a trial victory and at this point the school system was pressing for a settlement so that the policies which had taken a year to rewrite could be given a chance to address the problems complained of in the suit. The JCPS attorneys essentially said "enough", and would only allow these issues into the settlement document as a proposed agenda for further discussion after the suit had been settled. Continued vigilance and participation on policy review committees seemed to be the only remaining available option for the plaintiffs and community organizations concerned about the problem.

Several things happened in the fall of 1982 to indicate that the plaintiffs' concerns about proper implementation were well justified. Immediately after the new Uniform Code of Student Conduct was adopted by the Board of Education, Superintendent Ingwerson was quoted in the local papers as saying that the new Code was a "mandate" to teachers and administrators to "crack down" on students exhibiting problem behaviors. His interpretation was very much at odds with the views of the committee which had revised the Code. Their primary objectives, as noted above, were not to "crack down" on students, but rather to reduce suspensions, to eradicate discrimination in discipline, and to make the Code more uniform and clear. Ingwerson, however, asserted that it was part of a new "get tough" policy which he claimed parents

wanted.

Immediately after the Code was adopted and the Superintendent declared himself on his view of its message to students and staff, the school system held its annual administrative in-service day. At this meeting, all principals, assistant principals, and regional administrative officials were to receive training on the Code, the new procedures to be followed regarding discipline of special education students, and the referral monitoring system. In a meeting which lasted less than an hour, in a room filled with over 200 administrators, policies which had taken over a year to formulate were run through by a regional superintendent who had no part in writing them. A principal who had served on both the handbook and the Code revision committees was reportedly furious at the cursory, unsatisfactory treatment given to both the spirit and the letter of the new policies in this meeting. With this session as training, the administrators were then supposed to train teachers as school began.

The quality of the in-service training for teachers varied all across the county. Many principals undoubtedly took their task seriously and discussed the new policies at length with their staff. Several members of the Code revision committee, myself included, received some incredible reports from teachers, however. A number said they had been handed a copy and been told to read it, period. Others said their principal had adopted a facetious attitude toward it, indicating that it need not be taken seriously. Another teacher reported that her principal had openly mocked the Code and the Stevenson suit, saying they would administer discipline as they saw fit and that a copy of the Code would be on file in the library if

BEST COPY AVAILABLE

anyone wanted to bother to read it. Other teachers reported that both the principal and the teaching staff had been openly resentful of the provisions in the policy which restricted their use of corporal punishment and suspension and required them to be more strict in their observance of student rights and parental involvement. Many of these reports may have simply been rumors, but they were frequent enough and consistent enough to cause considerable consternation amongst those who hoped the new policies would succeed. The committee members who represented the teachers' union were sufficiently impressed with the inadequacy of the in-service training provided by JCPS that they took it upon themselves to hold their own training sessions for JCTA members.

Finally, as the settlement process reached its conclusion in early December, reports came out from the school system that the rate of suspension under the new Code had gone through the roof. A headline in the December 3, 1982 Courier-Journal said it all: "New discipline code brings 75% increase in student suspensions." The accompanying article indicated that while elementary school suspensions remained stable during the first two months of the year, middle school suspensions had jumped 151% and high school suspensions by 63% when compared to a year earlier. Furthermore, though all schools were under the same policy, the article pointed out that "some schools are suspending hundreds of students, [while] others are suspending few or none." The disproportionate rate of black suspensions had fallen off (as the policy committees had intended) from 43% the year before to only 38% during the first two months of the 1982-83 school year. In overall numbers, however, both black and

white suspensions had "skyrocketed" under the new Code.[66]

Each of these developments seemed to underscore fears that the new policies, while laudable in intent, would not be implemented properly. Concern with implementation and monitoring was the key to the various comments from community organizations received by the court prior to final approval of the settlement agreement. The Education Committee of the Louisville and Jefferson County Human Relations Commission called for extensive publicity and community education regarding the ramifications of the Stevenson policy changes, and a concerted effort by JCPS to educate and train parents and students in understanding their rights and responsibilities under the new regulations. They thought it imperative that the referral monitoring system be computerized and that the offense for which the referral was given be monitored as well.[67] My own comment to the court on behalf of the SPARC Governing Board also stressed problems with the monitoring system. We called for collection of data on "the race and gender of the referral source, the gender of the student, the behavior violation which prompted the referral, the action(s) taken by the teacher prior to referral, and the final disposition of the case." (This recommendation was essentially adopted as part of the settlement agreement. Two days before the final order, both parties agreed to a draft of the referral form which included all of the variables mentioned above.)[68] SPARC echoed the argument that the monitoring system be computerized, pointing out that "the volume of referrals (75,000 - 150,000 per year) and the need for sophisticated analytic capability would seem to mandate a computerized approach, similar to what is already being done with suspensions." My comment

also pointed out that by monitoring referrals, the focus would be "solely on teachers and will fail to scrutinize the actions of principals and assistant principals." This was, in our view, "a major shortcoming, given that school administrators, not teachers, have the power to suspend students." SPARC, along with other groups, called for strict accountability of school staff when racially disproportionate suspensions or referrals were uncovered.[69]

The NAACP's Education Committee shared these concerns and articulated other fears (also seconded by the Human Relations Commission and SPARC) regarding the composition and functioning of the Review Committee. All three groups called for civil rights and minority community organizations to have representatives on the committee and that the JCPS representatives include black and female employees. Each group worried that without representation from civil rights and educational and legal advocacy organizations, the Review Committee would become a rubber stamp for JCPS policy. The NAACP called for a community representative to co-chair the committee and the Human Relations Commission asked the court to order the plaintiffs attorneys to organize a separate plaintiffs committee to monitor compliance with the court's order and report regularly to the judge. The NAACP called for further investigation into the use of "time-out rooms" and "in-school suspensions," both of which tended to mask the rate at which students were being excluded from the regular classroom environment.[70] All three groups also expressed concern that JCPS had not done adequate in-service training for its staff.

In their comments, as in the proposed agenda for the Review Committee, these community organizations tried to reassert positions which they had failed to win throughout the process of negotiating the settlement. They had faint hope that Judge Allen might actually alter the agreement prior to entering his final order in the case, but wanted to go on record before the court on issues which were not resolved to their satisfaction. The die was cast already, however, and on December 16, 1982 the parties assembled in Judge Allen's courtroom. With very little fanfare, no testimony, and only a brief summation of the agreement by the attorneys, Stevenson v. Jefferson County Public Schools was settled.[71]

IV. CONCLUSION

There can be no doubt that the litigation of Stevenson provoked major changes in disciplinary policy in the Jefferson County schools. It was only under the threat of a costly, potentially damaging suit that the district agreed to sit down with their critics in the community to negotiate over policy. This in itself was a remarkable shift away from business as usual, for this or any other school system. Schools, like most other large, bureaucratic organizations, do not willingly subject their internal policies and procedures to criticism and wholesale revision by outsiders, especially to those who had in the past been vocal, confrontational, and antagonistic toward policies and staff whom they felt were unconcerned with their rights and interests. In this sense, the use of the suit to force change on a recalcitrant school system was a significant, positive strategy.

From the perspective of the handful of people who actually negotiated all the policy revisions and the terms of the settlement, many of the strides made were major ones, at least on paper. Parents and students now had much more clear cut guidelines regarding the schools' expectations and procedures. Student rights were strengthened considerably, not just in principle, but through concrete procedures which were designed to protect due process guarantees and lead toward reconciliation rather than confrontation. Parent involvement was seen as a key way to improve discipline and keep students in school and was built into the process at several stages. Staff members were encouraged to be more flexible in their discipline practices and were sharply restricted in their use of corporal punishment. Handicapped students were protected from discriminatory discipline based upon their disability and the policies overall were designed to reflect the varying levels of maturity and capacities for self-discipline of different groups of students. In these and other areas, the people intimately involved in the policy revision process could feel proud of their accomplishments, confidant that they had written fair, equitable discipline policies.

Litigation as a strategy had its pitfalls as well. The school system did not agree to negotiate policy out of good will alone, nor simply out of fear of the outcome of a trial. They had, after all, two prominent reports from the Office for Civil Rights exonerating them of charges of discrimination. Even so, they continued to be faced with angry black parents and students and a vocal and effective coalition of civil rights and advocacy groups who continued to raise allegations against the system. In a period when the district needed

to project a more positive image in the schools and also wanted to rid themselves of their most prominent critics, the posture of conciliatory negotiations over policy was an effective strategy for them. Their critics became tied up for over 15 months in endless committee meetings to discuss and revise policy, in a setting where JCPS could attempt to control the meeting, the agenda, and the policy outcomes. They had little to lose; if the proposed revisions went too far, the committee could always be reminded that it was simply advisory to the Board who could veto any changes deemed unacceptable to the district. Though this threat was not often carried out in fact, its frequent repetition served as a damper on committee members who got carried away in their zeal for reform.

The central premise for the strategy of both sides was that the policy level was the key arena for resolution of disputes over school system practices. This may have been the key weakness in the whole process, as the events of early 1982-83 seemed to indicate. No matter how fine the written policies may be, if they are misinterpreted, or sabataged, or disregarded at the level of practice, the reforms will be to no avail. The advocates of reform believed that they had established a framework within which they could pressure to schools to respect the rights of students in practice, but it quickly became apparent that massive training of school staff was needed as well as constant vigilance and monitoring of school practice. Direct advocacy at the school level and public monitoring at the community level were, of course, precisely where they had started prior to Stevenson. I don't mean to imply that the whole process was to no avail; on the contrary, good policy was established which has provided a means for

subsequent, albeit slow, reform of educational practice. It is important to recognize, however, that policy reform alone will not suffice, nor can it replace active community involvement at all levels of the educational process.

The settlement of Stevenson by no means settled the issues which it attempted to address. As we shall see, racially disproportionate suspensions continue to plague the Louisville schools some two years after the settlement agreement was signed. The litigation did force the schools to confront a serious problem and to sit down with their critics to seek some form of resolution. The extent to which that groundwork proves solid depends upon the determination of both parties to live up to spirit as well as the letter of the policies produced by the litigation.

V. THE EFFECTS OF STEVENSON

The Stevenson suit was settled in December of 1982, but the policy changes which made up the bulk of the settlement agreement were implemented as of the beginning of the 1982-83 school year. Prior to that time, the district had maintained detailed records of suspensions for every school in the county. This practice continued after Stevenson. Thus it is possible for us to examine the effects of the suit on suspensions, utilizing the extensive data gathered by JCPS. In this final section of the paper, I will present some analyses of these data, using the figures from 1981-82 as the pre-Stevenson base year and the data from 1982-83 and 1983-84 in comparison so we can judge the effectiveness of the new policies and procedures brought about by the suit.

The records JCPS maintains on suspensions are collected monthly and entered into the school system's computer. The data specify the numbers of suspensions for particular offenses at each school, by race, by gender, by whether it was a short-term or a long-term suspension, by whether a student had been previously suspended, and by special education status. The published reports from JCPS also provide monthly summaries for all elementary, all middle, and all high schools, plus all schools in the county, as well as monthly cumulative totals for each school. Thus it is possible to make a detailed analysis of suspension practices by school, by level, and system-wide. It is important to note that these data are not reported on a student-by-student basis, but are aggregate data at the school level. This limitation in the data would be significant if we were focusing on student behavior; it is not limiting for the present study, however, which is looking at schools' disciplinary practices.

There are several key questions I want to consider. They can be summarized as follows:

1. What happened to the overall patterns of suspensions for the district as a whole in the years following Stevenson?

2. Were the principal policy objectives (reducing the disproportionate rate of black suspensions as well as the number of suspensions overall) met?

3. Was there a significant degree of variation in the implementation of the new Code from school to school?

4. Can we pinpoint particular schools as problem areas, especially with regard to high rates of black suspensions?

5. Are there racial patterns in the kinds of offenses for which students are suspended?

6. Has the inclusion of attendance-related offenses (tardies and cutting class) affected the rate of suspension significantly?

Given the wealth of the available data, there are, of course, a host of other fascinating questions to consider. They will have to be the subject of another paper, however; I think that attention to these will be sufficient to judge the effect of the litigation on the school system's discipline practices. The answers to them will also point toward some further developments in policy and procedure which might improve the situation measurably.

1. Overall changes following Stevenson

As I indicated toward the end of the last section, the initial signs regarding the effect of the implementation of the new Code in the fall of 1982 were not at all hopeful. As the data in Table 5 demonstrates, the first year under the new policies saw the overall rate of suspensions increase dramatically.

Table 5
Summary Data On Suspensions
Jefferson County Public Schools
1981-82, 1982-83, 1983-84

All County Schools

Year	Total	White	Black	Percent White	Percent Black	% Black Enrolled	Black Disproportion
1981-82	6149	3448	2701	56.07	43.93	27.59	16.33
1982-83	7789	4557	3232	58.51	41.49	28.27	13.22
1983-84	6885	4107	2778	59.65	40.35	28.81	11.54

All High Schools

Year	Total	White	Black	Percent White	Percent Black	% Black Enrolled	Black Disproportion
1981-82	4291	2514	1777	58.59	41.41	24.51	16.90
1982-83	5453	3356	2097	61.54	38.46	24.89	13.57
1983-84	4806	2940	1866	61.17	38.83	25.26	13.27

All Middle Schools

Year	Total	White	Black	Percent White	Percent Black	% Black Enrolled	Black Disproportion
1981-82	1605	856	749	53.33	46.67	26.97	19.70
1982-83	1784	939	845	52.63	47.37	28.54	18.83
1983-84	1874	1097	777	58.54	41.46	29.94	11.52

Note: Black disproportion is the percent black suspensions minus percent black enrolled.

Source: Jefferson County Public Schools
Office of Pupil Personnel

For the district as a whole, total suspensions increased by nearly 27% in the first year of the revised Code, with white students being

suspended at a rate 32% above the pre-Stevenson level. White high school students bore the brunt of the increase; the 3356 suspensions levied against them was a 33.5% jump from the 2514 of the previous year. Black students were also suspended at a much higher rate, but their 19.7% increase in the district overall and 18% at the high school level was modest in comparison to the numbers of whites suspended that year. At the middle school level the increases were more moderate and more evenly distributed for both black and white students, though whites increased by nearly 10% and blacks by 11.3%. [*] Thus, though there was a significant drop in the proportion of suspensions which were assigned to black students, it came only because white suspensions went through the roof.

During 1983-84, the second year after Stevenson, things began to stabilize somewhat. District-wide, suspensions declined by 11.6% from the previous year, though they were still 12% above the pre-Stevenson rate. Black student suspensions declined by a full 14%, settling at a level very near their number in 1981-82. White suspensions declined by 10% but were still 19% above the 1981-82 level. The district's high schools replicated this pattern fairly closely, with lower rates for both black and white students in the second year of the new policies. Suspensions of white students in the middle schools continued to rise sharply in 1983-84, however, with just under 1100 suspensions of white students recorded that year. That rate represented a 28% increase over the two years, while suspensions of

[*] Elementary students actually showed the most dramatic rate of increase under the new Code during the first year, suffering a rise of 118% overall. Their small number of suspensions (253 in 1981-82, 552 in 1982-83) had little impact on the overall county rates, however. My analysis will focus on the district as a whole and on the middle and high school levels.

black middle school students during the same period returned to their pre-Stevenson level.

2. Were principal policy objectives met?

As I indicated in the discussion of policy revisions above, the changes brought about by the Stevenson settlement had a variety of objectives. Those which were considered key by the policy revision committees were to reduce the disproportionately high rate of black suspensions and to encourage the use of measures other than suspension to maintain discipline in the schools. The data in Table 5 show that the first objective was met, but only at the expense of the second.

District-wide, the proportion of suspensions assigned to black students fell steadily in the two years following the settlement, reaching a level which was the lowest in nearly a decade. At the same time, the percentage of black students enrolled in the school system increased slightly. Thus the disproportionate rate of black suspensions, which is measured by the difference between the black rate of enrollment and suspensions, declined significantly under the new Code. The decrease was especially noticeable at the middle school level. In 1981-82, black students were suspended at a rate nearly 20 percentage points above their proportion of the student body; two years later, this disproportionality had dropped to an 11.5 percentage point difference. At the high school level, black suspensions dropped below 40 percent for the first time ever.

Thus we can conclude that, for the district as a whole, the primary objective of reducing the disproportionate black rate of suspension was being met by the new policies and practices introduced

by the settlement of Stevenson. By the end of the 1983-84 school year, black students were still being suspended in excess of their proportion of students enrolled, but if the pattern begun in 1982-83 continued, this disproportion would be eliminated over time. These results could hardly be seen as a victory, however, when we consider the overall pattern of suspensions under the revised Code. The only reason the proportion of black suspensions declined was because the number of white suspensions increased at a far greater rate than the number of black suspensions - both rates increased, however, which was in direct contradiction to the intent of the new policies. Compared to whites the rate of black suspensions was an improvement, but both groups were excluded from school at a greater rate than they had been before Stevenson was settled. The overall increase in the numbers of suspensions for both white and black students was an unintended and undesirable consequence of the district's implementation of the new policies; the modest decrease in the disproportionate rate of black suspensions was small consolation for these disturbing increases. If, however, the overall numbers continue to decrease as the system learns to use the policies more effectively and in the ways in which they were designed, then the more racially proportionate rates of suspension will constitute a definite, lasting improvement over previous practices.

3. Did implementation vary from school to school?

A further objective of the settlement agreement was to make the administration of discipline more uniform throughout the county. With students being bused to several different schools during the course of their school career, it was thought that a more consistent,

county-wide application of the code might provide a more uniform set of expectations for student behavior and help avoid confusion resulting from different standards at different schools. Part of the settlement agreement in Stevenson called for thorough training of all staff on how to implement the new policies, in the hope that such training might help to bring consistency to discipline procedures across the district.

Table 6 summarizes the changes in total suspensions and in the level of racial disproportionality at each high school for each of the three years under consideration. It is readily apparent that there were wildly different interpretations of how to implement the Code, especially during the first year of its operation. A few schools were clearly responsible for the large increases in overall numbers that first year, including Butler (up 253%), Shawnee (up 209%), Moore (up 145%), and Fairdale (up 109%). Though its percentage increase was not as great as some others, Manual High School set an all time record that first year with 886 suspensions, accounting for over one-sixth of all high school suspensions. Other schools went just the opposite direction; Valley High nearly eliminated suspensions altogether, dropping from 452 to 29 under the revised Code. Southern High was down by 41%, Waggener by 25%, and Eastern by 14%. The distribution of suspensions from school to school was even more spread out than before the settlement, indicating a wide degree of variation in the interpretation of how to use the Code.

Table 6
Jefferson County High Schools
Summary Data, Suspensions and Racial Disproportions
1981-82, 1982-83, 1983-84

School Name	81-82 Total	82-83 Total	83-84 Total	81-82 Black Dispro-portion	82-83 Black Dispro-portion	83-84 Black Dispro-portion
Southern HS	559	329	464	7.17	13.13	12.73
Manual HS	514	886	366	19.70	5.30	13.57
Valley HS	452	29	146	21.74	35.01	17.43
Eastern HS	377	323	271	11.23	16.51	7.07
Doss HS	290	369	266	20.82	11.66	8.34
Fairdale HS	232	486	341	5.45	17.03	9.62
Fern Creek HS	227	307	346	22.03	21.62	2.36
Ballard HS	213	281	312	28.18	14.29	8.40
Waggener HS	201	151	268	17.06	13.26	10.22
Moore HS	200	491	481	21.08	6.99	13.13
Pleasure Ridge Pk HS	167	227	262	22.58	14.04	24.65
Central HS	139	225	213	18.10	35.20	26.44
Butler HS	137	484	125	25.18	14.81	30.73
Shawnee HS	128	396	252	11.19	-3.98	11.04
Seneca HS	117	117	182	10.08	19.72	13.27
Atherton HS	108	98	69	28.12	21.73	11.79
Jeffersontown HS	85	67	53	31.21	16.35	41.11
Western HS	68	95	153	25.02	7.74	14.16
Iroquois HS	41	27	56	24.10	22.96	16.99
Male Traditional HS	34	56	73	11.43	21.04	23.26
Brown School HS	2	9	9	4.65	27.81	-12.75
Total	4291	5453	4708			
Mean	204	260	224			
Median	167	227	252			
Stan. Dev.	156	215	134			

Note: Schools are listed according to total number of 1981-82 suspensions. Black disproportions are calculated by subtracting the black proportion of students enrolled from the black proportion of students suspended.

By the end of the second year, however, the staff at the various schools had apparently developed a more consistent set of procedures for utilizing the new policies. Not only were suspensions generally down from the previous year, but the range in the number of

suspensions from school to school had narrowed considerably. The large fluctuations apparent the first year were not as evident the second year. Manual High cut its rate by nearly 60% and only two high schools broke the 400 mark that year. Table 7 shows how the rates of suspension per 100 students enrolled changed during these years. Note the narrowed range and the smaller standard deviation in 1983-84, especially when compared to the first year of the revised Code.

Table 7
Jefferson County High Schools
Rates of Suspension
Suspensions Per 100 Students Enrolled

School	81-82 Rate	82-83 Rate	83-84 Rate
Southern HS	27.47	16.38	23.75
Manual HS	27.69	49.30	20.80
Valley HS	36.63	2.69	13.94
Eastern HS	30.33	26.96	22.03
Doss HS	.	32.26	22.64
Fairdale HS	17.59	39.48	26.31
Fern Creek HS	18.74	27.58	30.01
Ballard HS	13.93	19.77	21.17
Waggener HS	15.51	12.57	22.50
Moore HS	11.88	30.94	30.79
Pleasure Ridge Pk HS	9.78	13.66	15.88
Central HS	11.16	20.64	23.25
Butler HS	8.53	29.91	8.52
Shawnee HS	.	37.04	23.23
Seneca HS	8.11	8.31	12.95
Atherton HS	9.34	9.25	6.48
Jeffersontown HS	7.57	6.15	4.86
Western HS	.	7.86	12.94
Iroquois HS	.	1.93	4.20
Male Traditional HS	2.35	3.78	4.79
Brown School	.	5.14	4.92
Range	34.3	47.4	26.6
Mean	16.0	19.0	15.9
Stan. Dev.	9.7	13.8	8.3

Note: A '.' indicates missing enrollment data.

These figures indicate that by the end of the second year following Stevenson, the probability that a student might be suspended had

become much more equal from school to school across the district.

4. Are particular schools problematic?

This question is at the heart of the monitoring process, and its answer depends a great deal upon how we define disproportionality. Viewed as any variation from the black level of enrollment, nearly every school in the district would have to be considered a problem. If we define disproportionate as a black rate of suspension 20 percent above the rate of black enrollment (as the settlement agreement does in setting up the referral monitoring system), only a few schools stand out.

Let us assume that the data from 1982-83 is skewed because of the newness of the revised policies; the relevant year then would be 1983-84 when, as we have seen, the district seemed to settle into a more consistent use of the Code. The data for the high schools are presented in Table 6, above.

At the high school level, three schools stand out as obvious problems: Pleasure Ridge Park, Central, and Butler. Central is in the heart of the black community and is one of the historically black high schools from the pre-1975 city school system. 69% of Central's suspensions were given to black students, who comprised the highest rate of black enrollment (42.6%) of any high school in the district. Pleasure Ridge Park, on the other hand, is located far out in an all white section of the county; all black students are bused into that school. Its location, plus the fact that it has a relatively high overall rate of suspension (262) and a black rate some 24.6 percentage points higher than its black enrollment, make it a prime candidate for

further investigation. Butler has an even higher rate of disproportionality, but its use of suspension is relatively low in comparison to many other high schools.

These three high schools are the ones which would trigger an investigation using the 20 percentage points above black enrollment definition of disproportionality. My own view is that this trigger is too high; it assumes that black students should normally receive far greater numbers of suspensions than their enrollment would lead one to expect. A more accurate trigger would be to use the overall rate at each level (for the high schools in 1983-84, 13.27 percentage points above black enrollment). This method has the advantage of automatically adjusting the trigger as the district as a whole changes its practices, and it also reflects system-wide practices and thus sets a standard toward which each school should aim. Using this definition, an additional five schools would fall under investigation, including Jeffersontown, Iroquois, Male Traditional, Valley, and Western. The first three of those are probably not too problematic, given that they are near the bottom in overall rates of suspension. The schools which are of most concern are those which are both highly disproportionate and have a high rate of suspension.

The data for the middle schools in 1983-84 are found in Table 8. The overall rate of disproportionality for middle schools that year was 11.5 percentage points above the rate of black enrollment. Using that standard, Myers, Westport, Carrithers, Thomas Jefferson, Knight, and Lassiter should warrant further investigation. Several others have highly disproportionate black rates, but they suspend so few students (less than 3 per month) as to be considered unproblematic.

The Review Committee might want to inquire why a school like Lyman Johnson only suspends 11 students in a year, yet 10 of those are black. At the other end, Duvalle is right on the "norm" for black suspension rates, yet jumped from a total of 25 suspensions in 81-82 to 126 in the first year of the Stevenson Code, to a middle school high of 213 in 83-84; that pattern of increases clearly violates the intent of the Code.

Table 8
Jefferson County Middle Schools
1983-84 Suspensions

School Name	Total	White	Black	Percent Black	% Black Enrolled	Black Dispro-portion
Duvalle MS	213	94	119	55.87	43.99	11.88
Westport MS	166	83	83	50.00	24.91	25.09
Noe MS	154	124	30	19.48	22.64	-3.15
Bruce MS	140	97	43	30.71	21.73	8.98
Lassiter MS	136	74	62	45.59	31.97	13.61
Carrithers MS	118	60	58	49.15	28.87	20.28
Myers MS	109	41	68	62.39	35.95	26.43
Southern MS	108	79	29	26.85	32.80	-5.94
Meyzeek MS	105	75	30	28.57	30.27	-1.70
Thomas Jefferson MS	103	51	52	50.49	34.04	16.44
Stuart MS	102	73	29	28.43	18.85	9.58
Knight MS	81	48	33	40.74	26.57	14.17
Newberg MS	62	29	33	53.23	50.18	3.04
Barret MS	56	37	19	33.93	30.66	3.27
Highland MS	47	32	15	31.91	27.66	4.26
Frost MS	43	30	13	30.23	23.45	6.78
Iroquois MS	30	22	8	26.67	28.00	-1.33
Crosby MS	27	10	17	62.96	28.46	34.50
Western MS	21	11	10	47.62	29.90	17.72
Kammerer MS	12	12	0	0.00	32.71	-32.71
Lyman T. Johnson MS	11	1	10	90.91	42.56	48.34
Brown MS	5	4	1	20.00	41.21	-21.21
Conway MS	3	2	1	33.33	29.59	3.75

These middle school data present another interesting feature which calls out for further study. Six of the middle schools, including Noe (which is third highest in total suspensions) actually suspend black students at a rate lower than their rate of enrollment.

Four others are within 4 percentage points of being racially proportionate. Far too often, we assume that monitoring and investigation should be restricted to uncovering and explaining problem areas. Here is a case where JCPS could probably learn a lot more by looking at those schools which seem to have overcome the problem, seeking to make them a positive example for the others. They clearly demonstrate that it is possible to run a school which treats black and white students alike. They also stand out as evidence against those who want to claim that it is badly behaving black students who are the problem rather than discriminatory staff practices. Given that black students are randomly distributed throughout every school in the county and 10 out of 23 middle schools can handle their discipline without a significant disproportionate rate of black suspensions, the others would seem hard pressed to explain their own high rates of black suspensions on "bad black kids".

A similar look at those schools which simply don't use many suspensions at all to handle their discipline problems would also seem to be in order. The emphasis of the Stevenson settlement was to reduce both racially disproportionate suspensions and overall use of suspension as a discipline measure. Each year there are some schools which stand out because they just don't throw many kids out of school. Among the high schools, Male Traditional, Atherton, Iroquois, Jeffersontown, and the Brown School are exemplary. At the middle school level, Highland, Frost, Iroquois, Crosby, Western, Kammerer, Lyman Johnson, the Brown School, and Conway consistently have lower overall rates. Changes in policy alone apparently won't handle the problem, but there is no shortage of schools where teachers and

administrators seem to be able to administer effective discipline without excluding children from school.

5. Are there racial patterns to suspensions for particular offenses?

Descriptive analysis of the sort I have been doing tells us a good deal about the general effects of the settlement of discipline procedures and helps to establish district-wide norms, which can be used to point out schools which transgress acceptable standards and should be investigated. These sorts of aggregate data provide little insight into the specific causes of higher rates of black suspension, however. In this section, I want to delve more deeply into the racial differences in suspensions, focusing on any patterns which stand out in identifying particular kinds of offenses for which blacks or whites are most typically suspended.

Table 9 and Table 10 list the 1982-83 and 1983-84 data for suspensions by offense, giving the racial proportions for each at the county level. Examination of these tables shows that a few offenses count for the majority of suspensions, including disobedience, disruption, leaving grounds without permission, fighting, possession of drugs or alcohol, tardiness, cutting class, and (especially in 83-84) the catchall offense of violating school rules. Equally noteworthy is the fact that many of the most serious offenses (which are virtually guaranteed to result in a suspension) account for very few of the suspensions in the district. Low numbers of suspensions for fighting faculty, extortion, robbery, vandalism, arson, sale of drugs or alcohol, and possession of weapons would seem to give the lie to Reagan's law and order rhetoric about rampant violence in the

nation's schools. Fewer than 10 suspensions per month in the whole county system, (which, you will remember, has over 160 schools and nearly 90,000 students) does not indicate that Louisville's schools are particularly unsafe for teachers or students.

Table 9
All County Schools, 1982-83
Racial Proportion of Suspensions, By Offense

Offense	Total Suspensions	White Percent of Suspensions	Black Percent of Suspensions	Chi-Square
Violate Rules	266	62.03	37.97	1.388
Tardies	687	58.81	41.19	0.032
Cutting Class	556	71.76	28.24	40.457
No Sign Out	34	55.88	44.12	*****
Leaving Grounds	949	74.71	25.29	103.075
Forgery	24	62.50	37.50	*****
Disruption	792	51.39	48.61	16.354
Disobedience	986	55.98	44.02	2.510
Smoking	490	82.04	17.96	112.112
Gambling	13	30.77	69.23	*****
Profanity	407	44.23	55.77	34.006
Fighting	888	46.40	53.60	53.308
Fight Faculty	63	34.92	65.08	14.388
Intimidate Staff	310	35.16	64.84	69.359
Assault	197	31.98	68.02	56.931
Theft	311	45.34	54.66	22.088
Extortion	81	64.20	35.80	1.094
Robbery	35	40.00	60.00	*****
False Fire Alarm	59	40.68	59.32	7.691
Vandalism	66	60.61	39.39	0.124
Arson	16	75.00	25.00	*****
Poss. Drugs/Alcohol	422	74.41	25.59	44.143
Sale Drugs/Alcohol	84	73.81	26.19	8.140
Weapons	47	63.83	36.17	0.556
Overall Rate of Suspensions	7783	58.47%	41.53%	

Chi-square with 1 df at .05 significance level = 3.84
Chi-square with 1 df at .01 significance level = 6.64

Note: Chi-square calculated using overall rate of black and white suspensions as expected frequencies.
***** indicates n too small for valid chi-square.

Source: Jefferson County Public Schools
Office of Pupil Personnel

Table 10
All County Schools, 1983-84
Racial Proportion of Suspensions, By Offense

Offense	Total Suspensions	White Percent of Suspensions	Black Percent of Suspensions	Chi-Square
Violate Rules	564	67.02	32.98	12.46
Tardies	420	66.90	33.10	8.98
Cutting Class	369	77.51	22.49	48.50
No Sign Out	22	50.00	50.00	****
Leaving Grounds	607	78.75	21.25	91.29
Forgery	14	78.57	21.43	****
Disruption	488	55.53	44.47	3.58
Disobedience	1073	57.50	42.50	2.22
Smoking	267	89.14	10.86	96.01
Gambling	16	31.25	68.75	****
Profanity	343	43.44	56.56	37.84
Fighting	890	46.07	53.93	69.04
Fight Faculty	79	31.65	68.35	25.90
Intimidate Staff	361	42.66	57.34	43.73
Assault	205	36.10	63.90	47.59
Theft	233	31.76	68.24	75.78
Extortion	71	67.61	32.39	1.83
Robbery	14	64.29	35.71	****
False Fire Alarm	32	65.63	34.38	****
Vandalism	79	55.70	44.30	0.53
Arson	29	75.86	24.14	****
Poss. Drugs/Alcohol	544	74.08	25.92	46.57
Sale Drugs/Alcohol	89	77.53	22.47	11.72
Weapons	84	46.43	53.57	6.18
Overall Rate of Suspensions	6893	59.73%	40.27%	

Chi-square with 1 df at .05 significance level = 3.84
Chi-square with 1 df at .01 significance level = 6.64

Note: Chi-square calculated using overall rate of black and white suspensions as expected frequencies.
**** indicates n too small for valid chi-square.

Source: Jefferson County Public Schools
Office of Pupil Personnel

To check for racial patterns in the distribution of suspensions for particular offenses, I utilized a chi-square measure. Here I am not concerned with disproportionality compared to the black proportion of enrollment; using that standard, almost all offenses would show up

as significantly black, given the high rate of black suspensions. In this analysis, I am using the overall black rate of suspension as the expected frequency, in order to isolate those particular offenses which deviate significantly from the overall pattern. Tables 11 and 12 show very clearly that there is a highly significant racial pattern in the assignment of suspensions, by offense.

Table 11
All County Schools, 1982-83
Offenses With Significant Racial Disproportionalities

Offense	Total Suspensions	White Percent of Suspensions	Black Percent of Suspensions	Chi-Square
Leading White Offenses				
Smoking	490	82.04	17.96	112.112
Leaving Grounds	949	74.71	25.29	103.075
Poss. Drugs/Alcohol	422	74.41	25.59	44.143
Cutting Class	556	71.76	28.24	40.457
Sale Drugs/Alcohol	84	73.81	26.19	8.140
Leading Black Offenses				
Intimidate Staff	310	35.16	64.84	69.359
Assault	197	31.98	68.02	56.931
Fighting	888	46.40	53.60	53.308
Profanity	407	44.23	55.77	34.006
Theft	311	45.34	54.66	22.088
Disruption	792	51.39	48.61	16.354
Fight Faculty	63	34.92	65.08	14.388
False Fire Alarm	59	40.68	59.32	7.691
Overall Rate of Suspension		58.47%	41.53%	

Chi-square with 1 df at .05 significance level = 3.84
Chi-square with 1 df at .01 significance level = 6.64

Note: Chi-square calculated using overall rate of black and white suspensions as expected frequencies.

Source: Jefferson County Public Schools
Office of Pupil Personnel

Table 12
All County Schools, 1983-84
Offenses With Significant Racial Disproportionalities

Offense	Total Suspensions	White Percent of Suspensions	Black Percent of Suspensions	Chi-Square
Leading White Offenses				
Smoking	267	89.14	10.86	96.01
Leaving Grounds	607	78.75	21.25	91.29
Cutting Class	369	77.51	22.49	48.50
Poss. Drugs/Alcohol	544	74.08	25.92	46.57
Violate Rules	564	67.02	32.98	12.46
Sale Drugs/Alcohol	89	77.53	22.47	11.72
Tardies	420	66.90	33.10	8.98
Leading Black Offenses				
Theft	233	31.76	68.24	75.78
Fighting	890	46.07	53.93	69.04
Assault	205	36.10	63.90	47.59
Intimidate Staff	361	42.66	57.34	43.73
Profanity	343	43.44	56.56	37.84
Fight Faculty	79	31.65	68.35	25.90
Weapons	84	46.43	53.57	6.18
Overall Rate of Suspensions		59.73%	40.27%	

Chi-square with 1 df at .05 significance level = 3.84
Chi-square with 1 df at .01 significance level = 6.64

Note: Chi-square calculated using overall rate of black and white suspensions as expected frequencies.

Source: Jefferson County Public Schools
Office of Pupil Personnel

[*] In order to compensate for the wide variation in numbers of suspensions for particular offenses, I am using percentages rather than raw scores to calculate the chi-square statistic. Following Edwards (1946:244), I have multiplied chi-square by n/100 as a correction factor. This makes the magnitude of chi-square more comparable between offenses.

Note the patterns which persist over both years. White students are routinely suspended for the most minor offenses (excepting possession and sale of drugs and alcohol). Smoking, leaving grounds without permission, cutting class, being tardy, violating minor school rules; across the county, the suspensions handed out for these offenses go overwhelmingly to white students. The suspensions given predominantly to black students could not be more different in kind. Intimidation of staff, assault, fighting among students, disruption, fighting faculty, and profanity are all offenses for which black students are singled out for suspension at rates significantly higher than their overall rate for all offenses.

The white suspensions are fairly easy to explain. Most white students in the county spend most of their school years in their "home" schools, which are based upon neighborhood attendance zones. With the exception of the drug and alcohol violations, almost all of the predominantly white suspensions are for attendance-related offenses. Black students, most of whom are bused in to most schools, have little opportunity to be tardy and nowhere to go if they cut class or leave the school grounds; leaving the school means venturing into mostly white, often hostile, territory.

The black suspensions are more difficult to explain, but perhaps are more revealing of the underlying problem. Most of them are what the Office for Civil Rights would call "subjective" offenses, which depend upon the staff member's judgement to determine when an offense has occurred. Their conclusion about such offenses is on that I support, namely that it is the more subjective situations which are likely to lead to abuse and discriminatory treatment toward black

students. In addition, and more importantly, most of them involve a conflict situation, with several involving direct conflict between black students and (mostly) white staff. In a situation where black students are "outsiders" in many schools, white staff are likely to react very negatively to a black student who appears to challenge their authority and to resist standard norms of social control in the school. Kochman (1981) and others have shown that there is a substantial disjunction between white and black perceptions of what constitutes threatening verbal and physical behavior, with the white person being much more likely to assume that verbal conflict indicates the start of a fight or the conveyance of a serious threat. The pattern of black suspensions for disruption, intimidation, profanity, and fighting would seem to indicate that the situation in many schools is fraught with tension between black students and school staff and that the staff responds by regularly removing those students from school.

Examination of Tables 9 and 10 also provides an answer to one of the questions posed by the Stevenson settlement. Recall that during the negotiations over policy, the issue of tardies and class cuts as suspendable offenses was a major source of disagreement. In the first year of the new Code, these two offenses accounted for nearly 16% of all suspensions. In 1983-84, this figure dropped to 11.4% of all suspensions. It may be too early to see what the trend is in this case. The interesting study would be to compare the rates of suspensions for these offenses with the reported instances of attendance-related infractions. In this way, JCPS could settle the dispute as to whether barring a student from school is an effective

deterrent to repeated violations of the attendance rules.

VI. CONCLUSION

Several conclusions can be drawn from this analysis of the effects of the Stevenson policy changes. Overall, the district seems to be accomodating itself to the new procedures, despite a horrendous beginning. If the reductions in the black proportion of suspensions continue, the major objective of the plaintiffs in the suit will have been realized. There are still major problems with the overall rate of suspension; the district does not seem to have adequately embraced the central thesis of the new Code that alternatives to suspension should be actively sought out. Particular schools continue to be problematic, both in overall rates and in disproportionate rates of black suspensions, but here too, the patterns seem to be moving toward more consistency and uniformity. The racial distribution of suspensions by offense is the most disturbing aspect of the situation, but that is a feature which is not particularly susceptible to remedy through the policy process.

In fact, many of the problems which remain can only be resolved through intensive staff training, a clear mandate from the district's leadership supporting an end to discriminatory treatment and excessive use of suspensions, and careful monitoring by the Review Committee. The latter program is in place, at least in form. The two former items are more questionable. The early response to the settlement on the part of both staff and district leadership was inadequate and in violation of the spirit of the negotiations which established the new policies. JCPS will have to commit itself to extensive training of

staff in conflict-resolution and human relations skills if it truly wants to make its schools a place where black students are welcome and can feel comfortable. Racial balance and due process guarantees don't create an atmosphere where all can flourish, free of stigma and discriminatory treatment. Stevenson established the policies; the schools will have to live up to them.

NOTES

1. New York Times, December 12, 1984, p. 1.

2. Mark Stevenson, et al. v. Jefferson County Public Schools, et al., United States District Court, Western District of Kentucky at Louisville, Civil Action No. C80-0257-L(A), 1982.

3. John Haycraft et al. v. Board of Education of Louisville, Kentucky, et al., United States District Court, Western District of Kentucky at Louisville, Civil Action No. 7291G, 1971.

4. Newburg Area Council, Inc. v. Board of Education of Jefferson County, 510 F. 2d 1358 (6th Cir. 1974).

5. There is a mountain of documentary evidence on the controversial desegregation of the Louisville schools. Hundreds of articles appeared in the two excellent Louisville papers, the Courier-Journal and the Times. The relevant time period is from July 17, 1975 (when the 6th Circuit court issued a writ of mandamus which ordered the complete desegregation of the city and county schools) through September 12, 1980 (when the case was officially dismissed). My account is also based upon detailed reminiscences provided by many of the principal actors in the drama in a series of panel discussions on the issue at the University of Louisville in October and November 1980.

6. Courier-Journal, September 5-9, 1975.

7. A fascinating account of Judge Gordon's view of these events appeared in the Courier-Journal, September 21, 1980.

8. Tape of presentation by Dr. Frank Rapley, Assistant Superintendent, JCPS, at University of Louisville, November 7, 1980.

9. Courier-Journal, September 6, 1980.

10. Kentucky Commission on Human Rights, Jefferson County Schools Miss Desegregation Goals, Staff Report, April 1978.

11. Documentation of this sort of internal debate is difficult to come by. My account relies upon personal conversations (after the fact) with several participants, including Maurice Byrd, Sally Baker, and Marian Keyes (all associated with SPARC), and Dennis Bricking and Barry Master, Legal Aid attorneys for the Stevenson plaintiffs.

12. Stevenson.

13. Ibid.

14. Stevenson, Settlement Agreement, p. 3-4 and Exhibit A, Memo from Dawson Orman, JCPS Deputy Superintendent, September 14, 1981.

15. Letter to Superintendent David DeRuzzo, from Shirley McCune, Deputy Assistant Secretary for Equal Educational Opportunity Programs, U.S. Department of Education, February 28, 1981.

16. Ibid.

17. Ibid.

18. Ibid. Emergency School Aid Act, 20 U.S.C. 3196(c), and Section 280.24(d) of the Department of Education Regulations.

19. Letter, McCune to DeRuzzo, April 27, 1981.

20. Letter to DeRuzzo, from W. Lamar Clements, Director of Region IV Office for Civil Rights, U.S. Department of Education, May 6, 1981.

21. Office for Civil Rights, U.S. Department of Education, Statement of Findings, JCPS Title VI Compliance Review, Docket No. 04-81-5010, May 26-29, 1981.

22. Ibid., p. 5.

23. Ibid., p. 7.

24. Ibid., p. 8.

25. Ibid., p. 10.

26. Ibid.

27. Ibid.

28. Ibid., p. 11.

29. Washington Research Project, Childrens' Defense Fund, Children Out of School In America (Washington: The Fund, 1974); and School Suspensions: Are They Helping Children? (Washington: The Fund, 1975).

30. Alanson A. Van Fleet, Children Out of School in Ohio (Cleveland: Citizens' Council for Ohio Schools, 1976); Thomas J. Cottle, Barred From School, 2 Million Children! (Washington: New Republic Book Co., 1976).

31. OCR, Statement of Findings, p. 3.

32. Ibid., p. 11.

33. Ibid., p. 12.

34. Letter to W. Lamar Clements, OCR, from Donald Ingwerson, JCPS Superintendent, February 1, 1982.

35. JCPS Student Handbook Committee, Final Report, Student Handbook Project, April 5, 1982.

36. Ibid., p. 4.

37. Ibid.

38. This account of the rationale behind the Student Handbook and of the internal debates within the committee is based upon extensive conversations with several members of the committee, including Marian Keyes, Paul Frelich, Geoffrey Ellis, John Whiting, and Stuart Sampson.

39. Final Report, Student Handbook Project, Exhibit III, p. 30.

40. JCPS, Uniform Code of Student Conduct, 1982, p. 12.

41. Final Report, p. 1.

42. Ibid.

43. This account of the revision of the Uniform Code of Student Conduct is based upon my own very active participation on the committee, which I chaired for a good deal of its work. At the time, I was the Director of SPARC and also served as a consultant to the Stevenson plaintiffs' attorneys. Thus, I came to the committee as an outspoken supporter of student rights and as one whose job was to serve as an advocate for students and parents experiencing problems with the schools. This account is based upon extensive notes taken at the time, numerous draft copies of the Code, and the final version adopted by the Board of Education. While I make every effort to give a fair and accurate representation here of those events, readers should be aware that my own participation at the time was highly "value-committed" and that my observations are not "neutral," but are conditioned by that experience.

44. JCPS, Uniform Code of Student Conduct, 1982, p. 1.

45. Ibid.

46. Ibid., pp. 1-2.

47. Ibid., p. 2.

48. Ibid., p. 3.

49. Ibid., p. 2.

50. Ibid., p. 9.

51. Ibid., p. 2.

52. Ibid., p. 3.

53. Ibid., p. 3.

54. Ibid., p. 3.

55. Ibid., p. 4.

56. Ibid., p. 5.

57. Ibid., p. 6.

58. Ibid., p. 7.

59. Ibid., pp. 7-8.

60. JCPS, Discipline Referral Procedures: Monitoring and Corrective Action Components; (Exhibit K, Stevenson Settlement Agreement, pp. 1-5).

61. Ibid., pp. 10-11.

62. Ibid., p. 8.

63. Ibid., p. 12.

64. Stevenson Settlement Agreement, p. 12.

65. Ibid., pp. 12-14.

66. Courier-Journal, December 3, 1981, p. 1.

67. Louisville and Jefferson County Human Relations Commission, "Comment" on Stevenson Settlement Agreement, December 1982.

68. Stevenson Settlement Agreement, Exhibit O.

69. Student Parent Aid and Resource Center, "Comment" on Stevenson Settlement Agreement, December 1982.

70. Louisville Branch - NAACP, "Comment" on Stevenson Settlement Agreement, December 1982.

71. Stevenson, Final Order, December 16, 1982.